Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Improving Public Safety Communications in the 800 MHz Band	**)**	**WT Docket No. 02-55**
	)	

PETITION OF THE COUNTY OF FAIRFAX, VIRGINIA, FOR WAIVER OF THE COMMISSION'S JUNE 26, 2008, PROGRAM COMPLETION DATE FOR REBANDING THE COUNTY'S 800 MHZ CHANNELS

WAIVER – EXPEDITED ACTION REQUESTED

Office of the County Attorney

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SUMMARY

The County of Fairfax, Virginia ("County"), hereby petitions for waiver of the June 26, 2008, deadline for completion of reconfiguration by licensees that must reband pursuant to 47 C.F.R. § 90.677 and the Commission's Orders in this proceeding.[1] The County operates an 800 MHz public safety voice radio network and an 800 MHz public service voice radio network that are subject to the requirement to reband in this proceeding. The County asks that the Commission establish July 29, 2010, as the completion date for reconfiguration of the County's 800 MHz channels.

Fairfax County is one of fourteen 800 MHz licensees in the Washington, D.C., metropolitan area that is interoperable with each other. Over the past 20 years, these 14 National Capital Region ("NCR") licensees have built one of the most advanced interoperable public safety voice radio environments in the United States. For more than two years, the County has taken a leading role in working with NCR licensees, the Transition Administrator, Sprint Nextel, and Motorola, Inc., to identify a regional coordination process by which NCR licensees can accomplish the rebanding of 800 MHz public safety radio systems without sacrificing the high degree of interoperability that is so essential for this region. The NCR licensees, the Transition Administrator, and Sprint Nextel all agree that a coordinated, regional approach represents the only safe and cost-effective way to reband the NCR's public safety radio systems. These parties all have worked together to formalize that approach in the licensees' individual Frequency Reconfiguration Agreements ("FRA") and in regional coordination contracts.

[1] The Fairfax County – Sprint Nextel mediation was assigned TAM No. 11198 and was mediated by Aspasia A. Paroutsas, Esquire.

The County and Sprint Nextel have agreed upon FRAs for the County's 800 MHz radio systems, and those FRAs not only recognize the need for regional coordination, they require it. The Transition Administrator has approved one of the County's two FRAs (the second FRA is now under review by the Transition Administrator). However, the approval was made subject to the County's obtaining a waiver of the Program Completion date, because compliance with the obligation to coordinate with the other NCR jurisdictions will extend the County's reconfiguration activities past June 26, 2008.

Moreover, the Transition Administrator explicitly stated that unless the Commission grants this Petition, all costs the County incurs after June 26, 2008, are denied. The Transition Administrator's denial of all costs incurred after June 26, 2008, has brought the County's progress on retuning to a halt pending the Commission's action on this Petition. The County cannot execute FRAs and undertake millions of dollars of rebanding expenditures that may not be reimbursed. Accordingly, the County requests the Commission's expedited action to approve this Petition.

INTRODUCTION

Pursuant to 47 C.F.R §§ 1.3, 1.925 and 90.677(e) (2006), the County of Fairfax, Virginia ("County"), hereby petitions for waiver of the June 26, 2008, deadline for completion of reconfiguration by licensees that must reband pursuant to 47 C.F.R. § 90.677 and the Commission's Orders in this proceeding (hereinafter "the Completion Date").

The County is authorized by the Commission under Part 90 of the Commission's Rules to operate an 800 MHz public safety voice radio network (the "Public Safety System") under call signs WNAJ365 and KNIH412. This system is an eleven-site, twenty-channel trunked radio system that uses nine frequencies in the 1-120 channel range of the 800 MHz band. The County also operates an 800 MHz public service voice radio network (the "Public Service System") under call signs WQGK740, WQCP394, and WNYZ447. This system is a seven-site, twenty-channel trunked radio system that uses twenty channels in the National Public Safety Planning Advisory Committee ("NPSPAC") portion of the 800 MHz band. Both of the County's systems were manufactured by Motorola, Inc. Additionally, the County operates the region's Police Mutual Aid Radio System, which is a single-site, single-channel system licensed in the name of the Metropolitan Washington Council of Governments, under call sign WPQE450. Based on the best information that the County has at this time, the County

asks that the Commission establish July 29, 2010, as the completion date for reconfiguration of the County's 800 MHz channels.[2]

Sections 1.3 and 1.925 of the Commission's Rules authorize the Commission to grant waivers of the Rules when "good cause therefor is shown,"[3] and "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or . . . [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[4] The County's Petition satisfies each of these criteria.

The Commission's grant of a waiver is imperative, because it is the only way that the County can retune its 800 MHz public safety radios and maintain interoperability among the 800 MHz radio systems that police and firefighters rely upon to protect the health and safety of five million residents in the Washington, D.C., metropolitan area. Fairfax County is one of fourteen 800 MHz licensees in the Washington, D.C., metropolitan area that are interoperable with each other.[5] Over the past 20 years, these

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[2] As explained below, July 29, 2010, is the date by which the County currently expects it can vacate its 800 MHz 1-120 band channels. The 800 MHz channels in the NPSPAC band cannot move until the 1-120 band channels are vacated. Therefore, the County knows that it will have to request a waiver again once the County can more accurately determine the dates by which it can vacate its 800 MHz 1-120 band channels.

[3] 47 C.F.R. § 1.3.

[4] 47 C.F.R. § 1.925.

[5] These jurisdictions include Fairfax County, Virginia; Arlington County, Virginia; City of Alexandria, Virginia; Prince William County, Virginia; City of Manassas, Virginia; Fauquier County, Virginia; Loudoun County, Virginia; the District of Columbia; Montgomery County, Maryland; Frederick County, Maryland; Charles County,

14 National Capital Region ("NCR") licensees have built one of the most advanced interoperable public safety voice radio environments in the United States. That interoperability will be disrupted unless the rebanding of those systems is coordinated with due care and reasonable planning.

Fairfax County can reband its 800 MHz radio systems by June 2008 if it were to proceed independent of its interoperability partners. However, doing so would utterly defeat the underlying purpose of the rules of this program, "Improving Public Safety Communications in the 800 MHz Band." The Commission should note that the 800 MHz public safety licensees in the NCR have not experienced unacceptable levels of interference from Sprint Nextel CMRS sites. Therefore, extending the time over which the NCR will reconfigure its 800 MHz channels will not jeopardize public safety. To the contrary, it is adherence to the Completion Date that will jeopardize public safety. In other words, the Commission's waiver of the deadline will not frustrate the underlying purpose of the rules – it will protect the purpose of the rules.

JUSTIFICATION FOR THE WAIVER REQUEST

Over the past twenty years, Fairfax County and other local governments in the NCR have spent millions of dollars of federal, state, and local taxpayer funds and devoted tremendous effort to plan, engineer, create, coordinate, and govern one of the most advanced interoperable public safety voice radio environments in the United States. As a

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Maryland; Prince George's County, Maryland; as well as the Metropolitan Washington Airports Authority, and the University of Maryland. They also include a number of independent jurisdictions that are not licensees themselves, but are subscribers on the trunked radio systems of the licensees listed above. In Fairfax County alone, this includes three additional jurisdictions, the City of Fairfax and the Towns of Herndon and Vienna.

result of this long-term, coordinated regional effort to achieve interoperability, the public safety radios used by jurisdictions in the NCR and Central Maryland Area Radio Committee ("CMARC")[6] typically contain programming for all of that jurisdiction's neighbors, as well as many other jurisdictions in the region. In the NCR, interoperability has been placed into the hands of the police, firefighters, and other end users, where it can be used readily and without the delays caused by cumbersome patches or dispatcher intervention. This voice radio interoperability plays a critical role in the County's day-to-day responsibilities to protect the public, and it is an essential element in the County's response to major incidents, disasters, terrorist attacks, and other large-scale emergency response situations.[7]

In January 2007, the federal Department of Homeland Security released a report titled *Tactical Interoperable Communications Scorecards Summary Report and Findings*, which rated interoperability of public safety radio systems throughout the United States. In that report, the Department of Homeland Security gave the National Capital Region Urban Area[8] the highest possible rating of "Advanced Implementation" in all three rating areas of "Governance," "Standard Operating Procedures," and "Usage."[9]

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[6] CMARC consists of the following Maryland jurisdictions: Baltimore City, Baltimore County, Anne Arundel County, Carroll County, Harford County, and Howard County.

[7] Attached as Exhibit 1 is Fairfax County's Proposed Resolution Memorandum and Request for Dismissal of the Mediation, filed in Mediation No. TAM-11198 on January 12, 2006 (with the exhibits omitted because they are unnecessary for this Petition or duplicative). This document contains a description of the kinds of incidents in which NCR communications interoperability has been invaluable.

[8] The Department of Homeland Security used the term "National Capital Region Urban Area" to include a subset of the jurisdictions that we refer to in this Petition as the NCR. Specifically, the Department of Homeland Security included the District of Columbia, City of Alexandria, Arlington County, Fairfax County, Loudoun County, and Prince

The only way to maintain that interoperability throughout the region is to reband all participating regional partners in a step-by-step, coordinated fashion.

A. Regional Coordination is Critical

The County has approximately 8,000 voice radio subscriber units operating on its Public Safety System. Additionally, throughout the NCR there are approximately 23,000 voice radios owned by other licensees, agencies, and jurisdictions, including local, state, and federal public safety agencies that are programmed to include specific channels on the County's Public Safety System. Each of these non-County radios must be individually registered as a subscriber on the County's Public Safety System in order to be interoperable.[10] Before the County can begin rebanding the infrastructure associated with its nine 1-120 channels in its Public Safety System, each one of these thousands of radios must be equipped with the new rebanding firmware from Motorola, and then the radios must be reprogrammed with both the pre-rebanding and post-rebanding system parameters in order to ensure continued and uninterrupted operation on Fairfax County's Public Safety System.

Avoiding disruption of interoperability for non-County licensees in the NCR is vitally important to the County because those radios are utilized by the very jurisdictions

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William County in Virginia; and Montgomery County and Prince George's County in Maryland.

[9] See Exhibit 2, pages A56-A57 from *Tactical Interoperable Communications Scorecards Summary Report and Findings*.

[10] In all, there are approximately 35,000 public safety radios in the NCR that are interoperable with other radios within the NCR. Exhibit 3 includes a map showing 800 MHz systems and subscriber radio counts. Additionally, as the map shows, there are approximately 23,900 trunked subscriber radios in the Baltimore area and other areas outside the immediate NCR area that are interoperable with other jurisdictions, including jurisdictions that are included in the NCR. Exhibit 3 also includes a diagram showing the 800 MHz voice radio interoperability in the NCR and surrounding areas.

that come into Fairfax County to render assistance. Similarly, this communications capability permits the County to bring its own extensive public safety resources to the assistance of other NCR jurisdictions. For adjacent localities, this occurs on a routine, day-to-day mutual-aid basis. At a regional level, this occurs when a major incident overwhelms the County's own public safety resources and necessitates the involvement of other regional public safety resources. Such mutual-aid communication is common between the public safety personnel of the NCR jurisdictions.

This support is made possible because each radio contains a computerized configuration file known in the industry as a "template" or "codeplug" that identifies the correct parameters for communicating with other trunked radio systems in the region. These templates are designed or "engineered" for each model or series of radio in order to allow interoperable communications with other 800 MHz trunked radio systems in and around the NCR. Before template engineering can be performed, the parameters for each of the jurisdictions must be identified and consolidated into a document that correctly integrates those parameters into a regional template. For example, a typical Fairfax County Public Safety System radio contains programming for ten or more other trunked radio systems in and around the NCR. Before a new template for a County radio can be created and finalized, the County must identify all of the individual jurisdiction's rebanded templates to incorporate into a regional template for its radios.

In other words, the County cannot complete the engineering work required to develop new templates for each of the County's different "families" of trunked subscriber radios until all of the County's interoperability partners have identified the rebanding changes that will be made in their own systems. The system operators for each trunked

radio system must provide each other a detailed statement of the rebanding changes that are being made on their respective trunked radio systems in order for the template to work properly on that operator's system before, during, and after the infrastructure rebanding.

A high degree of schedule management, coordination, and oversight will be required in order to execute the complex task of rebanding in the NCR without inadvertently sacrificing voice radio interoperability. The Transition Administrator understands and acknowledges the requirement of this process in the NCR. Furthermore, it is essential to recognize that before the trunked radio system infrastructure of the NCR jurisdictions can be rebanded to new frequencies, every subscriber radio that is linked to that system must first be reprogrammed with a new regional template.

B. Additional Time is Necessary to Coordinate Regional Rebanding

Beginning in March 2005, immediately upon the Commission's approval of the Regional Prioritization Plan ("RPP"), the County began planning the rebanding of its 800 MHz voice radio networks.[11] The County soon realized that the RPP posed a significant threat to the interoperable voice radio communications that the County and other NCR jurisdictions had worked so hard to achieve. Therefore, in August 2005, the County initiated a series of meetings with other NCR and CMARC licensees to discuss the challenges that the region faced as a result of the RPP, especially the challenge of rebanding without sacrificing interoperability. The County made a presentation entitled *Maintaining Regional Interoperability During 800 MHz Rebanding.* A copy of that presentation is attached as Exhibit 4. With the agreement of the attendees at that

[11] The County has detailed many of these activities in Exhibit 1 (Fairfax County's Proposed Resolution Memorandum and Request for Dismissal of the Mediation).

meeting, the County hosted another regional meeting on September 1, 2005, and shared the same presentation and findings with the Transition Administrator and Sprint Nextel.

The regional coordination meetings and conference calls that the County initiated in August 2005 continue to this day, and they often include the Transition Administrator and Sprint Nextel. The meetings have produced a plan for regional rebanding coordination that, if it is allowed to proceed, will allow the 800 MHz licensees in the NCR to reband their systems without sacrificing voice radio interoperability.

Among the first issues that the County, other NCR licensees, the Transition Administrator, Motorola, and Sprint Nextel addressed was the development of a high-level project schedule that identifies the complex series of tasks and dependencies that must be considered in order to reband the 800 MHz public safety radio systems in the NCR without sacrificing public safety interoperability. The complexity of this high-level project schedule led these same parties to decide collectively that they needed to establish a management, coordination, and oversight process led by a regional coordinator.

However, the Commission's Order and the resulting rebanding processes established by the Transition Administrator did not initially provide a clear mechanism to take into account the complex interoperability environments that exist in certain areas of the United States, including the NCR. The County and the other NCR licensees faced significant challenges in attempting to structure a way to make the process work for the NCR as a whole.[12] The NCR encompasses licensees like Fairfax County, which have channels in both stages of Wave 1, and licensees with channels only in Stage 2 of

[12] *See, e.g.*, letter dated September 16, 2005, from David J. Barney, Fairfax County, to Brett Haan, Transition Administrator, which described the concerns that the County had developed, and for which it sought guidance, in the earliest stages of rebanding. A copy of this letter is attached as Exhibit 5.

Wave 1. Devising a regional coordination plan for licensees that spanned both stages of Wave 1 was complicated by the RPP, which established deadlines for licensees based solely on their current frequency assignments and did not account for the need to coordinate with their interoperability partners. Likewise, the PFA and FRA processes did not appear to contemplate such regional coordination. As a result, Sprint Nextel objected to the County's inclusion of costs in its PFA for regional coordination, because those costs were not specifically to plan Fairfax County's individual reconfiguration.

In addition, the rebanding process does not provide any guidance or assistance on how to structure leadership for a regional effort.[13] The many localities of the NCR spent considerable time working to identify an entity to act as a regional coordinator that could contract and make decisions on behalf of the entire NCR. Identifying a regional coordinator for the NCR is complicated by the fact that the NCR spans two states and the District of Columbia. No single NCR jurisdiction has legal authority to direct the actions of any other NCR jurisdiction-licensee. The Transition Administrator declined to participate in the identification of a regional coordinator, saying it was the responsibility of the licensees and that the Transition Administrator does not have authority to participate. For several months in the fall of 2006, it seemed that the Metropolitan Washington Council of Governments ("MWCOG") would be in a position to act as regional coordinator, since the NCR jurisdictions belong to MWCOG. However, contract

[13] More recently, the Transition Administrator has published a Fact Sheet on Mutual Aid and Interoperability, which says that the Transition Administrator recommends that each interoperability group should designate one "Lead Agency," but it does not provide any information to assist licensees in doing so. The Fact Sheet is available at http://www.800ta.org/content/PDF/reconfiguration_materials/Updated_Interoperability_Fact_Sheet.pdf .

negotiations slowed and MWCOG's participation ended because of the possible impacts of delay on the NCR's rebanding schedule.

In a parallel process during the fall of 2006, the County and other NCR licensees, with the participation of the Transition Administrator, undertook negotiations with Sprint Nextel and Motorola for regional coordination services. Specifically, the participants have been negotiating two contracts to effect regional coordination, which are roughly patterned after the PFA and FRA models. The first draft contract, called the Regional Planning and Coordination Agreement, is between the regional coordinator and Sprint Nextel, and contains Sprint Nextel's commitment to pay for regional coordination services. Under the second draft contract, between Motorola and the regional coordinator, Motorola will provide engineering and program management services at the direction of the regional coordinator to satisfy the requirements that NCR licensees have identified as necessary.

The draft contract between the regional coordinator and Motorola will require Motorola to develop, as its first deliverable, a regional "Master Schedule" that will incorporate all of the individual project schedules for each NCR public safety licensee into a consolidated schedule for the entire region. This project schedule will include all of the task predecessors, successors, dependencies, and relationships necessary to ensure that voice radio interoperability is not compromised during the rebanding process. Motorola projects that it can produce the Master Schedule within six months of contract execution.

By March 2007, the County, other NCR licensees, Sprint Nextel, and the Transition Administrator were in agreement that a regional approach is necessary and

were participating in negotiating the contracts described above to carry out that approach. At the same time, the County's deadline for completing its individual FRAs was approaching. The County, Sprint Nextel, and the Transition Administrator agreed upon "retuning cooperation" language to be included in the County's FRAs, and that language commits the County and Sprint Nextel to follow the regional coordination process.[14] In relevant part, the "retuning cooperation" language says that:

> The Parties acknowledge that the number of frequencies and locations covered by this Agreement will require the Incumbent to cooperate closely with its interoperability partners ("Participating Regional Licensees") in performing their respective reconfiguration activities. Incumbent will synchronize the retune of Incumbent's system with the regional coordinator (the "Regional Coordinator") designated in the Regional Planning and Coordination Agreement that will be entered into by the Regional Coordinator and Nextel (the "Regional Planning and Coordination Agreement") . . . . This coordination will include complying with the deadlines set forth in the . . . Master Schedule developed pursuant to the Regional Planning and Coordination Agreement (the . . . "Master Schedule . . .")

The language was drafted with the expectation that it will be included in the FRAs of all NCR licensees. Once all of the NCR licensees have executed their FRAs and all of them are formally bound to coordinate their retuning activities with each other, those FRAs will collectively provide authority to the regional coordinator to act on behalf of the region. That authority is important to Fairfax County because several weeks before it finalized its own FRAs, Fairfax County agreed to accept the role of NCR regional coordinator. As of today, however, most of the NCR licensees have not yet executed their FRAs, and they are not contractually bound – or contractually authorized – to retune according to a regional Master Schedule.

[14] The "retuning cooperation" section of the County's FRAs is attached as Exhibit 6.

At the Transition Administrator's direction, the County and Sprint Nextel also included language in the retuning cooperation provision that requires the Parties to submit a "Preliminary Master Schedule" in July 2007 – a time before Motorola could possibly generate the Master Schedule, and perhaps before Motorola is even under contract. The Transition Administrator knew that the most recent regional Preliminary Master Schedule contemplates a completion date well beyond the current Program Completion Date.[15] As a result, the Transition Administrator also directed the parties to acknowledge the need to obtain a waiver of the Completion Date from the Commission. Accordingly, the "retuning cooperation" provision in both of the FRAs to which the County and Sprint Nextel have agreed also include the following language:

> The Parties agree to adopt the Preliminary Master Schedule by July 31, 2007 or 45 days after the Effective Date of this Agreement, whichever is later . . . . The Parties further agree to adopt the Master Schedule within 45 days of its publication pursuant to the Regional Planning and Coordination Agreement. In the event the completion date in the Preliminary Master Schedule and/or the Master Schedule for the reconfiguration of Incumbent's system extends beyond the Current Program Completion Date, the completion date will require a waiver from the FCC.

This provision explains why the County is proceeding with this individual waiver request. The County's FRAs require the County to petition for this waiver, and they require the County to petition based on the completion date of a Preliminary Master Schedule. The Preliminary Master Schedule that the County is submitting with this Petition is high-level in nature and does not contain all of the detailed tasks required to safely and effectively reband the 800 MHz public safety radio systems in and around the NCR. However, it is the only schedule that currently covers the coordinated rebanding

[15] The most recent Preliminary Master Schedule for the NCR, which is the basis for the County's Petition, is attached as Exhibit 7.

of interoperable 800 MHz public safety voice radio networks in the NCR. The final Master Schedule will not be generated by Motorola until after execution of the draft Regional Planning and Coordination Agreement and the execution of the draft contract between the regional coordinator and Motorola, Inc. As a result, the Preliminary Master Schedule is subject to change depending on how much time is consumed by the regional negotiations, when these contracts are finalized and executed, how and when Motorola can obtain scheduling information from the other NCR licensees, or other factors completely outside of the County's control.[16] The most recent version of the Preliminary Master Schedule envisions that 1-120 channel retuning in and around the NCR, including retuning of the 1-120 channels operated by the County, will be completed on or before July 29, 2010. Reconfiguration of the NPSPAC channels cannot be completed until after the 1-120 channels are moved.

Should the Transition Administrator also direct the other NCR licensees to obtain waivers of the Completion Date for a Preliminary Master Schedule, then the Commission can anticipate receiving 13 more petitions for waiver of the completion date on the same grounds as set forth in this petition. Unless the Commission waives the Completion Date for all NCR licensees, a waiver of the Completion Date for the County or other individual licensees alone accomplishes nothing. The very purpose of this petition is to allow the County and its interoperability partners to coordinate rebanding within the region. Unfortunately, the County cannot properly petition for a waiver of the Completion Date

[16] The Preliminary Master Schedule is based on the assumption that the contract between the Regional Coordinator and Motorola would be executed more than a month ago, on April 16, 2007. That contract has not yet been executed and, as explained below, progress on it has been halted pending the Commission's action on this petition. Therefore, the dates set out in the Preliminary Master Schedule already are at risk.

on behalf of the NCR now, but the County notes that the Commission can grant such a waiver on its own motion. 47 C.F.R. § 1.925(a). The County believes that the Commission should establish July 29, 2010, as the Completion Date for all of the NCR licensees

C. Expedited Action on the County's Petition is Requested Because the Transition Administrator's Denial of All Costs After the Completion Date Has Halted All Rebanding Progress

On April 9, 2007, the Transition Administrator "approved" the FRA to which the County and Sprint Nextel have agreed for the County's Public Safety System but, in doing so, the Transition Administrator unilaterally imposed a condition that completely changes the agreement that the parties to the FRA had struck.[17] The Transition Administrator's "approval" letter specifically stated that "all costs incurred after the Program Completion Date will be considered denied" unless Fairfax County submits a request to the Commission to waive the Program Completion Date and the Commission grants the County's request.[18] In other words, even though there is agreement among the County, Sprint Nextel, and the Transition Administrator that regional coordination is critical, the Transition Administrator's condition imposes all risk solely upon the County should the Commission not grant the waiver. The Transition Administrator's condition also imposes a multimillion-dollar liability solely on the County should the Commission not grant the waiver. Because the County does not control whether the Commission

[17] Letter from Jon Strbak, Manager, Transition Administrator, to John Wehmann, Sprint Nextel, dated April 9, 2007, attached as Exhibit 8. The County and Sprint Nextel submitted the FRA for the County's NPSPAC channels to the Transition Administrator on April 30, 2007, for approval, but the Transition Administrator is still reviewing that FRA.

[18] See Exhibit 8 (Strbak letter) at 1 (emphasis added).

grants this Petition, the County cannot accept that risk. In fact, the County cannot control the regional retuning schedule that is the basis of the County's Petition, because the regional schedule depends upon the schedules of 13 other licensees, as well as the County.

Consequently, pending Commission action on this Petition, the County cannot execute the FRAs to which the County and Sprint Nextel have agreed. The County cannot commit itself to undertake millions of dollars of rebanding work that may not be reimbursed.[19] Nor can the County finalize the contract it is negotiating with Motorola to perform the reconfiguration work on the County's radio systems, because Sprint Nextel may be barred from paying Motorola for most of the costs. Until the Commission acts on this Petition, the County has no reasonable choice but to halt its progress toward reconfiguring its own system. The County notified the Transition Administrator about these concerns and objections by letter dated April 13, 2007, and asked for advice on how to proceed.[20] The Transition Administrator has not yet responded to the County's letter.

The implications of the Transition Administrator's denial of costs past the Completion Date reverberate throughout the NCR. The individual FRAs under negotiation by most of the NCR licensees are expected to include the same "retuning cooperation" provision as the County's FRA, requiring those licensees to retune

[19] The Commission has repeatedly stated that incumbents should not incur any costs to reconfigure their frequencies. *See, e.g.*, *Supplemental Order and Order on Reconsideration*, FCC 04-294, ¶15, 19 FCC Rcd. 15,129 (adopted Dec. 22, 2004), saying that "incumbents should incur no costs for band reconfiguration, and that the sole responsibility for paying all band reconfiguration costs – including the cost of preparing the estimate, negotiating the retuning agreement, and resolving any disputes – lies with Nextel."

[20] See letter from Erin C. Ward, Assistant County Attorney, Fairfax County, to Jon Strbak dated April 13, 2007, attached as Exhibit 9.

according to a regional schedule that will extend well past the Completion Date. The County has no reason to believe that the Transition Administrator will approve those contracts unless the Commission grants a waiver from the Completion Date. As a result, the County also has suspended further work on regional coordination negotiations and activities. Meanwhile, the County already has expended significant staff time and out-of-pocket costs on regional coordination that it may never recover. In light of the current uncertainty about how and when regional coordination will proceed, and with the costs of rebanding its own radio systems at risk, the County cannot continue to devote such significant resources to this effort.

CONCLUSION

The County has shown good cause for its waiver request. Rebanding of 800 MHz public safety radio systems in and around the NCR must proceed in an orderly and coordinated fashion if the critical interoperable communications capabilities currently in use throughout the region are to be preserved.

A grant of the requested waiver will be in the public interest. The region's public safety professionals protect approximately five million citizens who live or work in the NCR, and they protect literally hundreds of important governmental and private facilities. Those public safety professionals rely on their interoperable public safety voice radio systems to accomplish their day-to-day missions and to manage the public safety response to any large-scale disaster, terrorist attack, or other major incident that may occur. By granting a regional waiver on its own motion, the Commission will ensure that rebanding of the NCR 800 MHz trunked public safety radio systems can proceed in accordance with a regional rebanding schedule designed to ensure that critical

interoperable communications capabilities are not impaired or sacrificed during and after the physical rebanding process.

In this case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, and the County has no reasonable alternative. Requiring rebanding of the County's 800 MHz public safety radio system to proceed absent a carefully coordinated regional project plan and schedule is unreasonable, unrealistic, and entirely contrary to the public interest.

Section 90.677(e) of the Commission's Rules states "[i]ncumbents who wish not to relocate according to the schedule may petition the Commission for a waiver of the relocation obligation. Such a waiver would only be granted on a strict non-interference basis."[21] As with other 1-120 licensees in the NCR and elsewhere who seek to delay the relocation of 1-120 channels in order to maintain interoperability or for other reasons, certain NPSPAC licensees are impacted if they have facilities within 70 miles of the 1-120 incumbents. In the case of this Petition, the County notes that the Transition Administrator, in its April 9, 2007, letter to Sprint Nextel, has assigned full responsibility for coordination and interference mitigation with these NPSPAC licensees to Sprint Nextel.[22]

For the reasons set forth above, the County of Fairfax, Virginia, requests that the Commission grant a waiver of the County's obligation to complete reconfiguration of the County's 800 MHz Public Safety Voice Radio Network under call signs WNAJ365 and KNIH412; the County's 800 MHz NPSPAC Public Service Voice Radio Network under call signs WQGK740, WQCP394, and WNYZ447; and the Police Mutual Aid Radio

[21] 47 C.F.R. § 90.677(e).

[22] See Exhibit 8 (Strbak letter) at 2 and Attachment 1.

System, which is licensed in the name of the Metropolitan Washington Council of Governments, under call sign WPQE450, on or before the current Program Completion Date of June 26, 2008. The County requests that the Commission establish a revised Completion Date of July 29, 2010, for these call signs, in accordance with the most recent Preliminary Master Schedule. Additionally, the County urges the Commission to exercise its authority to act on its own motion and establish July 29, 2010, as the Completion Date for all 14 licensees.

Respectfully submitted,

COUNTY OF FAIRFAX, VIRGINIA

DAVID P. BOBZIEN
COUNTY ATTORNEY

By: _____
Erin C. Ward
Assistant County Attorney

Dated: May 24, 2007

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EXHIBIT 1

BEFORE THE
800 MHz TRANSITION ADMINISTRATOR, LLC
ALTERNATIVE DISPUTE RESOLUTION

In the Matter of	)	
	)	
NEXTEL COMMUNICATIONS, INC.	)	
	)	
and	)	Mediation No. TAM-11198
	)	Mediator: A. A. Paroutsas
FAIRFAX COUNTY, VIRGINIA	)	

FAIRFAX COUNTY'S PROPOSED RESOLUTION MEMORANDUM AND REQUEST FOR DISMISSAL OF THIS MEDIATION

January 12, 2006

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NEXTEL COMMUNICATIONS, INC.	)	Mediation No. TAM-11198
and	**)**	Mediator: A.A. Paroutsas
FAIRFAX COUNTY, VIRGINIA	**)**	

FAIRFAX COUNTY'S PROPOSED RESOLUTION MEMORANDUM AND REQUEST FOR DISMISSAL OF THIS MEDIATION

Fairfax County, Virginia ("County"), by its attorneys and in accordance with the Scheduling Order entered in this mediation, hereby submits this Proposed Resolution Memorandum and Request for Dismissal of this Mediation and (the "County's PRM/RDM") in the matter of Nextel and the County.

I. DISCUSSION

A. The Regulatory Context

As is demonstrated by the title of the leading docket (WT Docket 02-55) in the *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order,* FCC 04-169, 19 FCC Rcd. 14,969 (adopted July 8, 2004) ("*Report and Order*"), the issue addressed by the Federal Communications Commission ("FCC") in this proceeding is "**Improving Public Safety Communications in the 800 MHz Band**." Repeatedly in the course of the *Report and Order*, subsequent orders adopted by the FCC, and in the guidance provided by the FCC's Wireless

Telecommunications Bureau, the FCC has made clear that it is acting to assure that public safety agencies have wireless communications systems that are reliable and robust in order to support responses to public safety emergencies.[1]

Consistent with this objective, in the *Report and Order*, the Commission emphasized three points that are particularly relevant to the relief the County seeks in this PRM/RDM:

- The avoidance of disruption during the physical rebanding process.

First, in the *Report and Order*, the FCC asserted that it was establishing "a transition mechanism by which … there is minimal disruption to the operations of all affected 800 MHz incumbents during the transition period …" *Report and Order*, ¶ 4, 19 FCC Rcd. 14,973 (emphasis supplied.) The Commission stated that it was "committed to ensuring that the band reconfiguration process does not result in degradation of existing service or an adverse effect on public safety communications and operations." *Report and Order*, ¶ 26, 19 FCC Rcd. 14,986 (emphasis supplied.) In establishing the final "Commission Band Plan," the Commission took into account "five principal components," one of which was "[t]he extent to which incumbents would be treated most fairly, including the degree of disruption associated with channel changes, the ability to provide relocated incumbents with truly comparable spectrum and minimum interruption of critical public safety and CII communications." *Report and Order*, ¶ 149, 19 FCC Rcd. 15,048 (emphasis supplied); see also ¶ 151, 19 FCC Rcd. 15,050.

[1] See, e.g., *Report and Order*, ¶ 1, 19 FCC Rcd. at 14,971 (stating that "The Homeland Security obligations of the Nation's public safety agencies make it imperative that their communications systems are robust and highly reliable," and making clear that a specific purpose of the Report and Order was "to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band."); and see *Supplemental Order and Order on Reconsideration*, FCC 04-294, ¶ 91, 19 FCC Rcd. 25,120 (adopted Dec. 22, 2004) (*"Supplemental Order")* (stating that "there may be no matter within our jurisdiction more crucial to Homeland Security and the overall general safety of life and property than assuring that public safety communications systems are free from unacceptable interference and have adequate capacity.")

- The assurance of comparable facilities at the conclusion of the rebanding process

Second, the right to at least comparable facilities upon completion of the physical rebanding process is repeatedly confirmed in the *Report and Order*. See, e.g., *Report and Order*, ¶¶ 11 and 178, 19 FCC Rcd. 14,997 and 15,064. The Commission ordered rebanding with a view to ensuring "that relocating licensees receive 'comparable facilities' on their new frequency assignments, whether this requires retuning existing equipment or providing replacement equipment." *Report and Order*, ¶¶ 26 and 149, 19 FCC Rcd. at 14,986 and 15,048. The Commission wrote that "[a]ll relocating licensees shall be relocated to comparable facilities. Comparable facilities are those that will provide the same level of service as the incumbent's existing facilities, with transition to the new facilities as transparent as possible to the end user. Specifically, (1) equivalent channel capacity; (2) equivalent signaling capability, baud rate and access time; (3) coextensive geographic coverage; and (4) operating costs." *Report and Order*, ¶ 201, 19 FCC Rcd. 15,077 (emphasis supplied).

- Nextel will have to bear the cost of the rebanding process

Third, the Commission established a general rule that all costs of a licensee's participation in the 800 MHz rebanding are to be paid by Nextel. The Commission referred to and repeated that rule time and again in the *Report and Order*. See, e.g., *Report and Order*, ¶¶ 11 and 178, 19 FCC Rcd. 14,977, and 15,064. The Commission clearly and purposefully imposed the full cost of the 800 MHz Rebanding upon Nextel without any limitation upon the obligation of Nextel and rejected Nextel's effort to have a cap on its obligation. *Report and Order*, ¶ 29, 19 FCC Rcd. 14,987. This general rule was established by the Commission with full knowledge that underwriting the costs of the 800 MHz rebanding could be very high as a result of the fact that "band reconfiguration may require extensive replacement of existing 800 MHz band public safety equipment." *Report and*

Order, ¶ 24, 19 FCC Rcd. 14,985. Finally, the Commission in its *Supplemental Order* reiterated the general rule that "incumbents should incur no costs for band reconfiguration, and that the sole responsibility for paying all band reconfiguration costs – including the cost of preparing the estimate, negotiating the retuning agreement, and resolving any disputes – lies with Nextel." ¶15, 19 FCC Rcd. 15,129 (emphasis supplied.)

B. Fairfax County, Virginia

The County is a political subdivision of the Commonwealth of Virginia. The County has a population of slightly more than one million people, making it the most populous jurisdiction in both Virginia and the Washington, D.C. area. More than 555,000 persons work in the County. The total area of the County is approximately 406 square miles, including 395 square miles of land and 11 square miles of water in a number of lakes and embayments along the Potomac River.

The County is the site of many government facilities, including several federal government installations that are sensitive and vital to the defense and homeland security efforts of the United States, *e.g.*, the Central Intelligence Agency, the National Reconnaissance Office, the U.S. Army's Fort Belvoir, and numerous other federal offices, facilities and properties. The County also serves as the location of many privately and publicly owned facilities that are important to the health, safety, and welfare of the businesses and residents of the County, many nonresident employees and visitors, and many others in the region and the nation. For example, the County is the site of key telecommunications and transportation facilities that serve the County, the region, and the nation.

In order to provide security and protection within its jurisdiction, the County has a full range of police and fire and rescue services. The County Police Department is the 38th largest police department in the United States, and it employs 1,990 persons, including 1,337 sworn law

enforcement officers. The County Department of Fire and Rescue Services employs over 1,200 uniformed personnel, including firefighters and emergency medical technicians, and those persons are supplemented by more than 300 volunteer firefighters and emergency medical technicians.

The County also has a Public Safety Communications Center ("PSCC") that utilizes a computer aided dispatch system and other technology to receive emergency 9-1-1 telephone calls and to dispatch police, and fire and rescue personnel and other assistance as is needed. The PSCC serves the County, as well as the City of Fairfax and the Towns of Herndon, Vienna, and Clifton. The PSCC receives approximately 1.2 million calls per year.

C. Fairfax County's Public Safety Communications System

The County operates an eleven site, 20-channel Motorola ASTRO SmartZone digital trunked 800 MHz public safety communications system, and that system is used daily by the County Police Department, the County Fire and Rescue Department, the County Sheriff, the police departments of the City of Fairfax and the Towns of Herndon and Vienna, and the County Public Schools Security Office. The system also supports use by other government public safety agencies, including agencies of the federal government, throughout the Washington area for mutual aid incidents, backup communications, and interoperability. This system directly supports approximately 8,000 subscriber radios operated by the County and those governments and agencies that generally use the County system. Additionally, it supports approximately 25,000 other radios operated by the County's mutual aid partners, including public safety agencies for the District of Columbia, the Metropolitan Washington Airports Authority, the Virginia Counties of Arlington, Fauquier, Loudoun, and Prince William, the Virginia Cities of Alexandra, Fairfax, and Manassas, the Virginia Towns of Herndon and Vienna, the Maryland Counties of Montgomery and Charles, U.S. Army Fort Belvoir, various state agencies, federal agencies, and others ("the

County's Interoperability Partners")[2]. In order to support such diverse users, this County system has been configured to handle 267 talk groups (see Exhibit 1, RCC "800 MHz Voice Radio Interoperability Web").

The importance of maintaining effective interoperability in the Washington area has been underlined by specific regional events. For example, on the afternoon of January 13, 1982, Washington area public safety agencies were confronted, simultaneously, by the crash of Air Florida Flight 90 into the 14th Street Bridge, an underground subway accident, and a powerful snowstorm. Following that horrific experience, public safety agencies in the Washington-Baltimore area have placed great emphasis on establishing and maintaining radio interoperability between the region's public safety agencies.

As a result, the public safety agencies in the Washington-Baltimore area now benefit from an exceptional, if not unsurpassed, level of public safety agency interoperability. This is an essential feature for effective public safety response in the National Capitol Region. More specifically, fire and rescue agencies throughout Northern Virginia and the Washington area rely on a system of automatic mutual aid, whereby resources are shared between different jurisdictions, in some cases many times a day. For fire and rescue operations, mutual aid response normally is determined on a "closest unit responds" basis, and it is common for those first responders who are scheduled to respond to emergencies in particular areas to be based in a neighboring jurisdiction. Similarly, law enforcement agencies rely on interoperable communications to accomplish their missions when responding to incidents in neighboring jurisdictions or in coordinating their response to events that affect multiple jurisdictions. This

[2] Since 2002, the County has received an estimated $8.3 million in federal grant funds to improve radio interoperability. This is an important investment in the infrastructure that supports the County's public safety agencies.

type of modern, direct, interdepartmental radio communication is more effective and efficient than relying on the historical method of relaying transmissions though a central dispatcher at the PSCC.

The County has experienced numerous incidents, some involving major events and others involving day-to-day operations, in which the interoperability capabilities of the radios in the Washington area have been of vital importance. Although the day-to-day importance of interoperability is paramount, this capability has played a vital role in large-scale events and disasters as well, and must continue to do so in the future. Some of these events include the following:

(a) **Pentagon Attack; September 11, 2001.** The immediate first response to the attack on the Pentagon consisted of Fire and Rescue units from the Fort Meyer Fire Department, Arlington County Fire Department, Metropolitan Washington Airports Authority, Alexandria City Fire Department, and Fairfax County Fire and Rescue Department. All of these resources were able to communicate directly on the Arlington County Fire Department radio talk groups, and used for incident command and tactical communications. The situation was extremely chaotic and these radio talkgroups were vital in communicating urgent situation reports and requests for additional resources. Many of the fire department resources that arrived later from outside of the National Capitol Region did not possess interoperable radio equipment, however, all of the initial response units were equipped with fully interoperable radio equipment. This valuable capability existed prior to the attack and has been expanded since then, at a significant cost, to include additional jurisdictions.

(b) **Sniper Incidents, October 2002.** In October 2002, the population of

Washington, DC, and the surrounding suburbs was practically held hostage by a team of two snipers who terrorized the region for a three-week period. At this time, much of the interoperable communications capability was still under development. Montgomery County, Maryland, was in the process of implementing its compatible radio system, and conducted an emergency deployment of its new, but untried subscriber radios in order to create interoperable communications with Fairfax County and other Northern Virginia jurisdictions. Interoperable communications played a key role in the public safety response to this situation.

(c) **Hurricane Isabel; September 18-19, 2003.** At the peak of Hurricane Isabel in September 2003, the trunked radio system operated by Arlington County, Virginia, suffered a system-wide failure. Arlington County Fire and Rescue units immediately switched to talk groups on the County system, where they remained and conducted operations until the restoration of the Arlington system. The Fairfax system provides usable (but reduced) public safety radio coverage to surrounding jurisdictions, and is available for use anytime by other jurisdictions in the National Capitol Region.

(d) **Prince William County; November 2005.** During the month of November 2005, Prince William County, Virginia, suffered a series of unexpected outages in its trunked radio system that occurred during a scheduled system software upgrade. On each outage, Prince William County Police and Fire units immediately switched to talk groups on the Fairfax County system, where they remained and conducted operations until the Prince William County system was restored.

The interoperability of communications in the National Capitol Region during these large-scale events, along with the important day-to-day public safety response capability, demonstrates

the importance of public safety voice radio interoperability in a most effective way. As a result, local governments have made significant investments in the region to enhance interoperability, including the purchase of an interoperable police radio system and expansion of the interoperable fire radio system by the District of Columbia, the expansion and strengthening of Fairfax County's public safety radio system, and the purchase of approximately 1,250 interoperable voice radios by Fairfax County, Virginia, Montgomery County, Maryland, and the District of Columbia for placement in rapidly deployable cache trailers for use in any jurisdiction in the National Capitol Region in case of a major event or disaster. The majority of these purchases, if not all of them, were made using federal grant funds.

D. The Problem – How the RPP Threatens Interoperability

The maintenance of this vital radio interoperability during the rebanding process is now threatened by the Regional Prioritization Plan ("RPP") schedule for Wave 1. The RPP consists of four waves, each wave consisting of two stages. Channels 1-120 are included in Stage 1 of each Wave, and the Expansion Band and NPSPAC Channels are included in Stage 2 of each Wave. Elements of each of the waves overlap subsequent waves in a staggered fashion, as shown in Exhibit 2.

The RPP schedules the County and the Washington, DC, Fire Department to relocate their 800 MHz frequency channels in Stage 1 of Wave 1, but the RPP schedules most of the other governments in the Washington area to relocate in Stage 2 of Wave 1. The RPP therefore calls for the County to abandon its radio operations in the 806-809 MHz/851-854 MHz bands ("Channels 1-120") no later than June 30, 2006. This schedule creates two dangerous problems for the County and the region that the County and its Interoperability Partners cannot resolve.

First, rigid compliance with the rebanding schedule set forth in the RPP will create a

lengthy and unnecessary period during which emergency radio interoperability between public safety agencies in the Washington area will be significantly and dangerously compromised. If the County were to relocate its 800 MHz radio operations in accordance with the RPP's Stage 1 schedule, then thousands of radios used by Stage 2 governments will no longer be able to operate seamlessly on the County's network, unless those thousands of radios were retuned as well. The County does not control the radios operated by those Stage 2 governments, and the County cannot compel those other governments to go to the considerable expense and effort of retuning their radios before their frequency changes are required by the Stage 2 schedule. Moreover, even if those radios owned by Stage 2 governments were retuned early to follow the County's retuning effort, then the County would have to retune its own radios a second time to follow the Stage 2 governments when they make their own 800 MHz frequency changes.

The most immediately affected licensees in the current RPP that occupy the spectrum assigned to Stage 1 of Wave 1 are the County and the District of Columbia. However, other governments in the Washington area also will face a loss of interoperability when their subscriber radios no longer operate with full functionality and reliability on the County's new frequencies. This loss of interoperability will create a vulnerability that will spread across jurisdictional boundaries and affect public safety agencies throughout the region. The maintenance of these linkages is the most important reason for a concurrent regional reconfiguration. The higher costs and the additional disruption to operations also are two more significant reasons that support concurrent reconfiguration.

Second, the reconfiguration of the County's public safety radio systems, and those of the County's Interoperability Partners, cannot be accomplished safely, much less be accomplished cost effectively, without rebanding software and firmware currently under development by

Motorola ("the Motorola Solution"). The Motorola Solution is not now available. In order to be effective, the Motorola Solution must be sufficiently tested in actual operating environments and be available in sufficient qualities to facilitate the rebanding of Motorola-based radio systems. Those conditions will likely preclude compliance by the June 30, 2006, deadline established by the RPP.

The impact of attempting to reconfigure the County's public safety radio system without the Motorola Solution is serious:

- Adverse Effects upon Talk Groups and Interoperability: The "interoperability web" currently linking public safety agencies in the Washington-Baltimore area includes an estimated 48,000 subscriber radios on 18 systems on some level of shared or talk group programming. (See Exhibit 1.) The channels used for these linkages exist in both the 806-809 ("Stage 1") and 821-824 MHz ("Stage 2," NPSPAC) segments of the broadcast spectrum. For example, the radios used by County fire and rescue services units may include up to 128 talk groups from eight neighboring jurisdictions. Montgomery County, Maryland, makes room for 144 talk groups from nine jurisdictions. The District of Columbia makes room for 96 talk groups from six jurisdictions. If retuning in Stage 1 is limited to systems currently using Channels 1-120 at 806-809 MHz, then that retuning will "miss" those Stage 2 systems that participate in Stage 1 system talk groups. The change in frequencies for the Stage 1 systems will not be picked up on the Stage 2 systems until months later. Conversely, changes in NPSPAC frequency assignments during Stage 2 will need to be retrofitted – serially retuned – into Stage 1 systems.

- Loss of Control Channel Redundancy: The Motorola radio system infrastructure employed by the County and others utilizes (1) multiple Central Site Controllers which contain the essential intelligence of the system and (2) the Trunking Control Channels to express the

commands from the active Central Site Controller to all subscriber radio units operating in the field. Because of the importance of the availability of the Trunking Control Channel to the functioning of the system, Motorola has designed the system with one active control channel and three back-up control channels. Therefore, at present, Motorola subscriber radios can be programmed with a maximum of four Trunking Control channels. If one or more of the control channels utilized in the Motorola radio system infrastructure is retuned, subscriber radios will no longer have access to all four control channels and will lose redundant control channel capability. Thus, taking one or two control channels down at a time for retuning, then reprogramming the subscriber radios to match, is neither safe nor cost-effective. This requires serial reprogramming of the radio system infrastructure and thousands of native and talk group-linked radios. Full capability will not be restored until all subscriber radios are individually retuned to match the control channels, and "full capability" must include not only the subscriber radios native to the system but also those radios in other jurisdictions linked to the retuned system using "talk groups."

- Loss of Failsoft Functionality: Failsoft functionality provides last-ditch basic emergency radio systems capacity if overall radio system control is lost. Failsoft functionality depends upon the linking of particular channels to particular talk groups of subscribers. That critical link is established in the programming of the subscriber units. This is done before the unit is issued to a particular user and depends upon the membership of that user in a specific talk group. At present, Motorola subscriber radios can be programmed with only one failsoft channel for each talk group. As in the control channel example above, if one or more of the radio channels utilized in the Motorola radio system infrastructure is retuned, those subscriber radios that had been programmed to seek the channel(s) in failsoft mode will no longer be able to find them. Not until

all native and talk group radios have been retuned will failsoft capability be restored.

E. The Motorola Solution will Mitigate Adverse Effects

The proposed new Motorola Solution is intended to eliminate the programming limitations applicable to existing subscriber units and to make available additional features critical to the smooth and expeditious implementation of the physical rebanding process. Motorola has represented that its new solution includes: (a) the provision of eight control channels for each Motorola trunked radio system; (b) the provision of two failsoft channels for each talk group or subscriber unit personality; (c) the enabling of new trunked channel plans for the trunked controller to broadcast 12.5 KHz channel spacing in the 851-854 MHz range; and (d) a "rebanding bit" that will be broadcast on a system control channel and enable subscriber radios to know whether the old or the new trunked channel plan should be used for a particular system. In other words, the Motorola Solution promises to place redundant capability in each subscriber unit, instead of building a totally redundant system – complete with one-to-one redundant subscriber units.

While the Motorola Solution may not totally eliminate temporary losses of radio system capacity, redundancy and failure recovery functionality or other potential risks inherent in the rebanding process, the availability of this firmware is expected to mitigate the potential risks that will arise as a consequence of proceeding under the current RPP schedule.

F. The County Requested Assistance from the TA

The County and its Interoperability Partners, working with RCC Consultants, Inc. ("RCC"), discovered the problems created by the RPP schedule and the impact of the delayed availability of the Motorola Solution on the Wave 1 licensees, and they brought the problems to the attention of Nextel and the TA. At a meeting held on September 1, 2005, RCC, with the

County, its Interoperability Partners, several other jurisdictions in the National Capitol Region, presented Nextel and the TA with an explanation of the consequences of proceeding with reconfiguration without the Motorola Solution and a proposed resolution. (See Exhibit 3.)

Specifically, the County and its Interoperability Partners explained to the TA that:

- the safest and most cost-effective method for the reconfiguration of their 800 MHz public safety radio systems would be to utilize the Motorola Solution;
- the Motorola Solution has not been released or tested as yet and is unavailable to the County and its Interoperability Partners;
- without the Motorola Solution, the reconfiguration of the 800 MHz public safety radio systems of the County and its Interoperability Partners will involve unreasonable risk to the public safety and will be very expensive; and,
- the RPP should be modified in a comprehensive manner in order that (i) the County and its Interoperability Partners be authorized to proceed with the reconfiguration of their public safety radio systems after the Motorola Solution has been tested and made available and (ii) no interference or other disruption be caused to other 800 MHz licensees by such alteration of the RPP.[3]

Both the TA and Nextel expressed great interest and support in response to the September 1 presentation. At the explicit instructions of the TA, by letter dated September 15, 2005, the County formally requested that the TA defer the County's reconfiguration of the channels affected by Stage 1 of Wave 1. The County's letter noted that the County's concerns are shared, and the request was supported by, a coalition of concerned licensees in the Washington-Baltimore region

[3] The TA has recognized the value of the Motorola Solution. See *800 MHz Transition Administrator, LLC, Quarterly Progress Report for the Quarter Ended September 30, 2005,* at 9.

(the "Coalition").[4] By letter dated September 23, 2005, the TA asked for additional information and analysis to enable it to better evaluate the request. The TA stated that it was "prepared to meet immediately with affected National Capital Regional stakeholders and commit all necessary resources to work [ ] to arrive at an appropriate schedule determination." The TA noted, without any specificity, that "certain of the actions" requested might require FCC action. On October 21, 2005, RCC provided the County, its Interoperability Partners and the TA with additional information and methods to address the disruptions to 800 MHz public safety radio systems caused by following the RPP, and the advantages of modifying the RPP in order to minimize those disruptions.

G. The TA's Response to the Request for Assistance

On November 23, 2005, the TA provided a report to the Coalition comparing four of the licensees in the Coalition included in Stage 1 of Wave 1 (Fairfax County; the District of Columbia; Baltimore County, Maryland; and Frederick County, Maryland) to 17 "other" licensees that are not members of the Coalition, but which would be affected by a delay in the RPP schedule as requested by the members of the Coalition. These "other" licensees are NPSPAC licensees who occupy channels that will either be on the same frequency as, or adjacent to, the nine lower 120 channels currently in use by the four above-identified public safety radio system.

On that same date, the TA presented this information (one month before the end of the

[4] That coalition includes, besides Fairfax, County, the County of Arlington, Virginia, the City of Alexandria, Virginia, the District of Columbia, the Metropolitan Washington Airports Authority, the County of Prince William, Virginia, the City of Manassas, Virginia, the County of Fauquier, Virginia, the County of Loudoun, Virginia, the County of Montgomery, Maryland, the County of Howard, Maryland, the County of Frederick, Maryland, the County of Carroll, Maryland, the County of Baltimore, Maryland, the City of Baltimore, Maryland, the County of Harford, Maryland, the County of Anne Arundel, Maryland, and the County of Charles, Maryland.

mandatory negotiation period), the TA informed the County and the Coalition that they must file a request for waiver with the FCC and that the TA would not participate in such a request unless the FCC asked the TA for comments. Further, the TA suggested that the County and the Coalition be responsible for coordinating and resolving any interference or other issues of licensees on the same or adjacent channels.

It is evident that neither an individual member of the Coalition nor the members of the Coalition acting together can obtain relief for the present unavailability of the Motorola Solution without affecting other Wave 1 800 MHz public safety licensees immediately outside the boundaries of the Coalition. Those licensees may have interoperations with their neighboring public safety licensees. Should those licensees and their interoperability partners seek to protect themselves from interference from the members of the Coalition by deferring their own reconfigurations, then other 800 MHz licensees would be affected. This domino effect could ultimately impact the entire regional Wave 1 effort. This domino effect is beyond the ability of the members of the Coalition to control and it is not appropriate for the TA to delegate such actions to the County or the Coalition. Neither would a waiver from the FCC provide the County or the Coalition with the ability to effect the required coordination. Only the TA can address such an issue, and the TA has declined to do so.

II. PROPOSED RESOLUTION MEMORANDUM

A. Summary of the Negotiations

On March 1, 2005, in preparation for negotiations, Fairfax County assigned a contractor team to "baseline" (document the configuration and performance) and inventory the County's 800 MHz Motorola Trunked Radio Systems, as well as its subscriber radios. This effort was scheduled for completion by June 27, 2005. However, the high degree of interoperability in the

National Capitol Region greatly increased the size and complexity of the task. The baseline was substantially completed on July 22, 2005. The County and RCC began studying rebanding approaches and methodologies to begin developing plans and estimates. In this analysis phase, the County and RCC discovered that daily interoperations and failsoft communications would be disrupted during the rebanding implementation process.

On July 27, 2005, the County held a kickoff meeting with Nextel Communications to discuss the overview of the County's findings, including information regarding radio systems, direct users, Interoperability Partners, and reconfiguration concerns, particularly with respect to the interoperability and failsoft functionality.

On August 2, 2005, the County wrote to Motorola, Inc., and requested answers to several technical and performance questions regarding the proposed rebanding firmware that Motorola was developing to facilitate the reconfiguration process. Motorola responded to the County on August 21, 2005, but declined to certify any operational or performance characteristics of the proposed software until its release in the May 2006 timeframe.

On August 17, 2005, the County hosted a meeting attended by approximately 75 representatives of its Interoperability Partners. At this meeting, the group discussed the problem of maintaining interoperability during rebanding, the immediate unavailability of the proposed Motorola Solution, and the RPP. As a result of these discussions, the group decided that they should make a presentation to the TA and Nextel to discuss the group's concerns.

On September 1, 2005, as discussed above, the Coalition met with Nextel and the TA. At the TA's suggestion, by letter dated September 16, 2005, the County asked the TA to defer its reconfiguration of the channels affected by Stage 1 of Wave 1.

On October 20, 2005, Nextel and the County met to review the presentation that RCC was

preparing to give at a meeting scheduled for October 21 with the Coalition and the TA, and to discuss the comparison of rebanding methodology and resultant disruption. Nextel indicated that it concurred with the action requested by the County and the Coalition, as long as the TA's Office approved the deferral.

On October 21, 2005, the County and the Coalition met with the TA's Office. The presentation by RCC illustrated three methods to safely reband the systems, and it recommended that the best methodology would be to wait for the Motorola Solution. The TA agreed with the recommendation. The TA offered to take the lead role in seeking a deferral from the FCC, providing the Coalition would supply additional supporting information.

On November 10, 2005, Nextel and the County met to discuss the status of the ongoing request to the TA.

On November 22, 2005, the County and Nextel met again. The County provided Nextel the County's summary equipment counts of subscriber radios and infrastructure for Fairfax County, Town of Herndon, Town of Vienna, and City of Fairfax.

On November 23, 2005, the County met with the TA's Office to further discuss the County's and the Coalition's request for deferral. The County was informed by the TA's Office that the County and the Coalition members should file a request for waiver with the FCC, and that the TA's Office would not take the case to the FCC on its own, as previously suggested.

On December 12, 2005, Nextel and the County met. Because (1) the TA's Office declined to grant or take any action on the deferral, (2) the Motorola Solution is unavailable, and (3) the RPP as currently applicable to Fairfax County required it to submit a cost estimate before the end of the mandatory negotiation period on December 27, 2005, Fairfax County submitted to Nextel a cost estimate for a redundant trunked radio system in order to proceed with the rebanding process,

maintain comparable facilities, and continue public safety operations without disruption.

B. Discussion of the Issues in Dispute

(1) The County's Reasonable Estimate of Reconfiguration Costs

Nextel's argument that the County has not provided a proper estimate of reconfiguration costs is incorrect. The County believes that Nextel's problem with the cost estimate is not that the cost estimate is improper, but rather that the cost estimate is expensive.

As the Nextel PRM concedes, without a change in the schedule of the RPP, the County must proceed now and thus must rely upon currently available code for use in the reconfiguration of its public safety radio system. Clearly, the reliance by the County upon currently available methods of reconfiguration is entirely proper when the County is obligated under the RPP, which has not been modified despite the County's request, to proceed now.

Nextel does not really challenge the reasonableness of the costs of the County's chosen method of reconfiguration, but, rather challenges the County's choice of reconfiguration method. The FCC has decided that "[i]f the reconfiguration of a licensee will entail a significant interruption of service during the relocation process, Nextel will fund the installation of a redundant system." *Report and Order*, ¶ 201, 19 FCC Rcd. at 15,075-77 (emphasis supplied.) The County and its interoperability partners demonstrated to both Nextel and the TA the risks attending the reconfiguration of 800 MHz public safety radio systems without the Motorola rebanding firmware which is not available to the County and its interoperability partners. Those 800 MHz licensees have plainly made the case that the reconfiguration will entail a significant interruption of service during the relocation process and can with complete propriety invoke the rule that "Nextel will fund the installation of a redundant system."

While Nextel observes that the County's reconfiguration cost estimate is high, Nextel never

disputes that a redundant system is required if the County and its Interoperability Partners are to proceed with reconfiguration now before the Motorola Solution is available. Nor does Nextel contend that the cost thereof has not been properly estimated.

As previously noted, the FCC established a general rule that all costs of a licensee's participation in the 800 MHz Rebanding are to be paid by Nextel. The Commission referred to and repeated that rule time and again in the *Report and Order* and in the *Supplemental Order*. The Commission clearly and purposively imposed the full cost of the 800 MHz Rebanding upon Nextel without any limitation upon the obligation of Nextel and rejected Nextel's effort to have a cap on its obligation. *Report and Order*, ¶ 29, p. 19 (Emphasis supplied.) The general rule was established by the Commission with full knowledge that underwriting the costs of the 800 MHz Rebanding could be very high as a result of the fact that "band reconfiguration may require extensive replacement of existing 800 MHz band public safety equipment" or otherwise. *Report and Order*, ¶ 24, p. 17.

(2) Mediation Should Be Terminated

The parties to this mediation are essentially in agreement as to the appropriate resolution of this matter – modification of the RPP schedule to permit the County and its Interoperability Partners members to plan and retune their radios after the Motorola Solution is tested and available.[5] In its PRM in this Matter, Nextel proposes that the TA Mediator recommend rescheduling of Fairfax County's and the NCR's retuning process in light of the unique circumstances posed by this project." (Nextel PRM at i-ii.) Fairfax County agrees. The schedule should be changed.

Fairfax County and its Interoperability Partners, have explained to the TA the need for a

[5] Additionally, more than a month ago, in comments filed with the FCC's Wireless Telecommunications Bureau about the status of 800 MHz band reconfiguration, Nextel recommended that the start date of the 800 MHz band reconfiguration be pushed back to February 29, 2006, to reflect recent actions by the FCC. (See Exhibit 4 at page 7.)

modification of the RPP in order to enable a safe and cost-effective reconfiguration of the public safety radio system of Fairfax County and its interoperability partners. As stated earlier, after advising Fairfax County and its interoperability partners that the TA would take responsibility for making necessary adjustment to the RPP, including the securing of any required approval by the FCC, the TA made an about face and determined:

- not to proceed with a modifying the RPP in the manner previously agreed;
- to place responsibility upon the County and its interoperability partners to seek relief from the FCC without the support of the TA;
- to place the responsibility of administering the rebanding process on the County to the extent the County requested delay that impacts other Wave 1 licensees.

It is that decision of the TA which prevents the Parties from seeking to negotiate, execute, and deliver an FRA. The Parties are not in dispute upon the central issue, which is that their entry into an FRA depends upon the TA's revising the RPP. No FRA has been entered by the parties not because the Parties disagree with respect to how to proceed, but, rather, because of the decision of the TA.

The decision of the TA:

- leaves the County in a position in which its only available course is to negotiate for a rebanding plan that proceeds in the absence of the Motorola Solution and involves the installation of a fully redundant system, but such course of action is not as safe as the Motorola Solution from a public safety standpoint, and is not cost-effective; and
- leaves Nextel confronted with a proper demand by the County for a fully redundant system (in the absence of the Motorola Solution) which Nextel cannot reasonably deny (in the absence of relief from the TA in relation to the RPP). Nextel has characterized the County's

submission as unreasonable, not because Nextel is able to show that there is an alternative (which Nextel has not and cannot and, in principle, may not), but, rather because a fully redundant solution is so expensive.

Therefore, the primary question is whether the Parties should be required to mediate the failure of the Parties to agree upon an FRA because the TA declined to make appropriate and required modifications to the RPP. This issue is clearly not subject to mediation because "TA Mediators shall not mediate disputes *involving* the TA." The County's 800 MHz public safety radio system should be reconfigured only when the Motorola Solution is available and properly tested. Accordingly, the RPP schedule should be modified to enable the County to defer configuration until that time. Nextel plainly shares that conclusion. Nextel states in the Nextel PRM that: "Nextel has not yet elicited a realistic cost estimate and retuning plan from Fairfax County. This is directly linked to a dilemma outside of the control of both Nextel and Fairfax County; Fairfax County's ability to provide a reasonable cost estimate appears entirely dependent on the near-future release of new software and firmware from Motorola, without which a reasonable retuning plan for Fairfax cannot be undertaken or completed. Accordingly, an adjustment to the TA's Regional Priority Plan is a prerequisite for Fairfax County to provide a reasonable cost estimate that does not jeopardize the interoperability that exists between the various Public Safety agencies in our country's National Capitol Region (NCR)."

There is no dispute between the County and Nextel which presently prevents the Parties from agreeing upon an FRA. The only dispute is between the parties and the TA, and that dispute relates to the decision of the TA not to proceed with a modifying the RPP in the manner previously agreed; and to place responsibility upon the County and its interoperability partners to seek relief from the FCC without the support of the TA. The propriety of that decision cannot be the subject of this

mediation. Accordingly, this mediation should be terminated, and all further proceedings herein should cease with immediate effect.

Fairfax County is preparing a petition for review by the FCC of the decision by the TA to decline to take responsibility for the making of modifications to the RPP to enable Fairfax County and its interoperability partners to defer the reconfiguration of their 800 MHz public safety radio systems until the Motorola rebanding firmware is available and tested.[6]

CONCLUSION

For the reasons stated, this mediation should be terminated, and all further proceedings herein should cease with immediate effect.

***

To the best of the knowledge of the undersigned, the statements and representations made in County's PRM/RDM and Appendix are true and accurate, and the undersigned so attests.

FAIRFAX COUNTY, VIRGINIA

By: _____

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(703) 324-2665(fax)

[6] The TA acknowledges in the ADR Plan that "decisions [of the TA] are subject to review by the Commission under the *Report and Order*, as supplemented by the *Supplemental Order*, and Memorandum Opinion and Order, FCC 05-174, ___ FCC Rcd. ___ (adopted Oct. 3, 2005) and the Commission's Rules of Practice, 47 C.F.R. §§1.1 *et seq.*" (ADR Plan at p.2)

Appendix of Documents Submitted by Fairfax County, Virginia in Mediation No. TAM-11198

1. 800 MHz Voice Radio Interoperability Web
2. RPP Waves and Stages
3. September 1, 2005, RCC Presentation to TA
4. Letter dated December 1, 2005, from Sprint Nextel to Cathy Seidel, Acting Chief, Wireless Telecommunications Bureau, FCC

Certificate of Service

I certify that I caused this document to be delivered electronically to the following email addresses:

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_____

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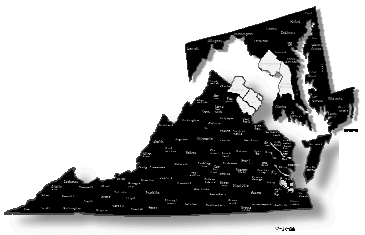
EXHIBIT 2

National Capital Region

Tactical Interoperable Communications Scorecard



Summary

Governance: *Advanced Implementation*

Standard Operating Procedures: *Advanced Implementation*

Usage: *Advanced Implementation*

The National Capital Region (NCR) Urban Area (UA) includes the District of Columbia. It also includes the Virginia city of Alexandria; and the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Maryland counties of Montgomery and Prince George's.

Governance: *Advanced Implementation*

Interoperability in the NCR UA is overseen by a hierarchy of formalized committees, headed by the Senior Policy Group at the executive level. The Washington Council of Governments' Joint Police and Fire Communications Committee addresses specific technical and operational policies. Agreements among agencies are largely in place and are being compiled, and steps should be taken to ensure that these agreements are regularly reviewed. An established strategic plan for voice communications was developed and is currently being updated to incorporate wireless data communications, as well as to include additional state and federal agencies. The NCR UA has demonstrated success in using funding to address regional communications interoperability needs, most notably through the joint acquisition and implementation of a cache of 1,250 NCR radios. Given the sustained success of the UA in working together to attain interoperability assets through cooperated efforts, the area should consider the merits of documenting a regionwide funding strategy that comprehensively addresses regional interoperability fiscal needs for the next 3 to 5 years.

Recommendations:

- Investigate means to more formally involve federal agencies (in addition to communications working group membership) and define their roles and responsibilities
- Establish and/or identify the UA's systematic process to develop and review agreements (e.g., usage agreements, memoranda of understanding) at least every 3 to 5 years and after significant events or upgrades
- Build on the UA's success to support statewide interoperability throughout Virginia and Maryland

Standard Operating Procedures (SOP): *Advanced Implementation*

The policies for use of the NCR UA shared systems, as well as the Metropolitan Interoperability Radio System (MIRS) fixed gateway system and NCR radio cache, are long established and were effectively documented in Section 3 of the Tactical Interoperable Communications Plan (TICP). The UA used the TICP as an opportunity to enhance some of these policies and to disseminate them to all included agencies. The UA also undertook an aggressive effort to document communications assets in the area through the use of the CASM tool. National Incident Management System (NIMS)/Incident Command System (ICS) has been in place for more than 1 year and is proficiently used; particularly by the fire community. NIMS/ICS was effectively used during the TICP validation exercise, including a successful deployment of the Communications Unit and Communications Unit Leader (COML). The COML was able to efficiently deploy multi-agency resources and coordinated by radio and face-to-face with command and general staff.

The area is committed to integrating the COML position into its response structure and officials have indicated that they hope to be actively involved in the development of this training curriculum.

Recommendation:

- Continue basic and advanced training and exercises on SOPs (include communications unit implementation consistent with the TICP) to ensure that all participating first responder agencies attain and maintain NIMS/ICS compliance

---

Usage: *Advanced Implementation* ●

The NCR UA conducts multidiscipline and multijurisdictional communications across the area on a daily basis. The well-established use of their shared systems by primary first responders as well as proficiency of using MIRS and the regional radio cache for outside agencies was seamlessly demonstrated during the TICP validation exercise. The UA specifically verified that its personnel could achieve interoperable communications using fixed gateways with responders from Prince George's County, which is the only county not currently using a 800 megahertz (MHz) system. Communication was also achieved with multiple state and federal agencies.

Recommendation:

- Consider adding communications interoperability as a component of all future exercises and include agencies outside of the defined UA

Below is a summary of the area's existing technology used to provide communications interoperability:

Technology Overview

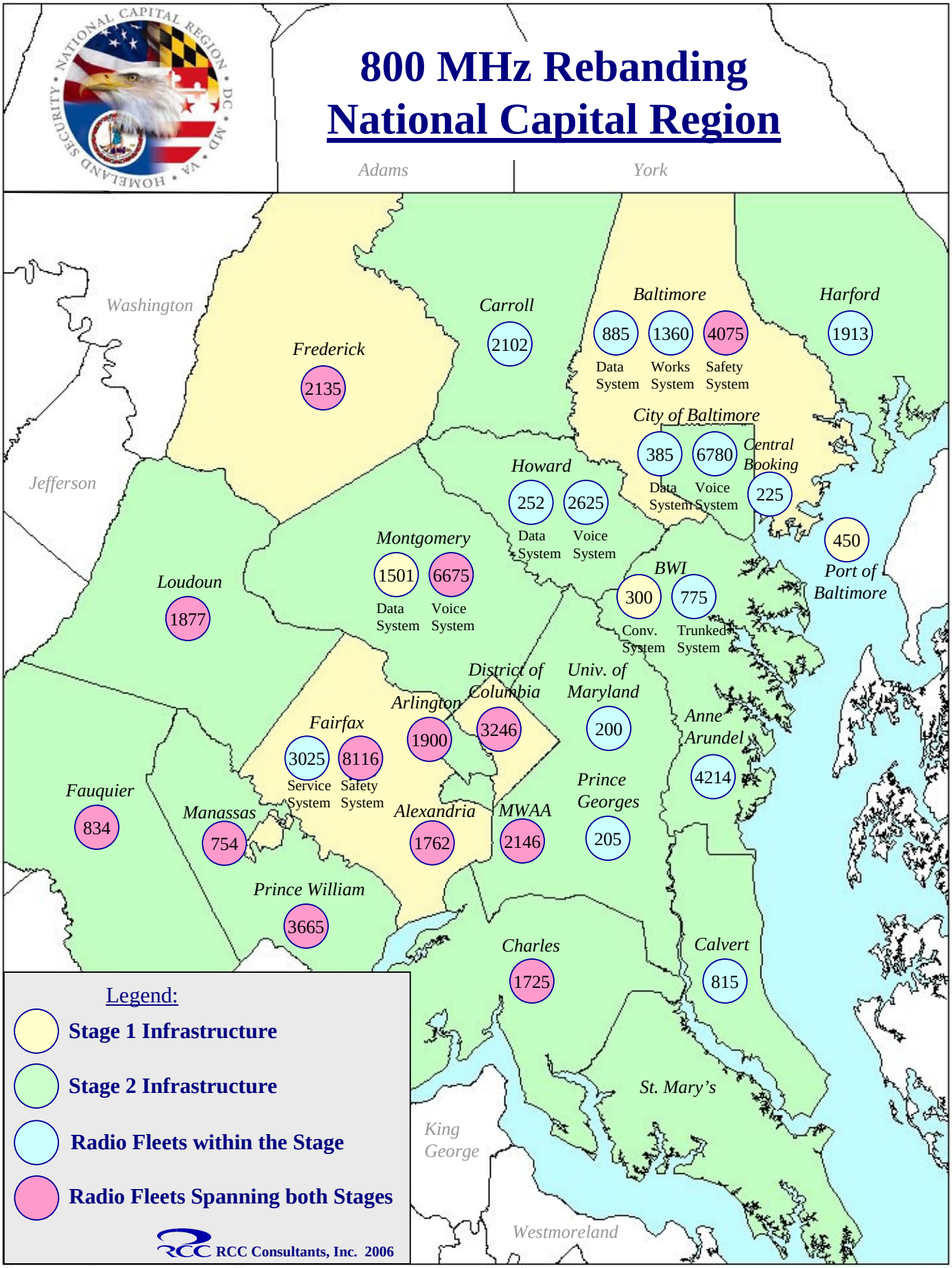
The NCR UA has 25 separate communications systems in the area servicing public safety agencies in the District of Columbia, northern Virginia, and Maryland. The District of Columbia Fire and Emergency Medical Services, all of the suburban northern Virginia, and Maryland public safety agencies (except those in Prince George's County, Maryland) are using separate but interconnected 800 MHz Motorola SmartZone™ systems. Regional interoperability is primarily achieved through the use of shared systems, fixed gateways, shared channels, talk groups, and cached radios. The fixed gateways interconnect the NCR Police Mutual Aid Radio System, the Fire Mutual Aid Radio System, and National Public Safety Policy Advisory Committee channels (known locally as the regional Interoperability Network System). Mobile gateways are only used on an incident-specific basis.

The NCR UA anticipates migrating existing radio systems to a Project 25 (P25)-compliant system in the near future. Alexandria and Arlington, Virginia, are expected to upgrade their existing systems to become P25-compliant, and a new P25-compliant radio network will be deployed in Prince George's County, Maryland. Other jurisdictions in the NCR UA will have to make similar upgrades in order to ensure effective communications are maintained throughout the area.

In the long-term, the NCR UA is considering expanding to include the cities of Baltimore, Maryland, and Richmond, Virginia. The UA expansion will require extending the capabilities of regional radio systems and interoperability capabilities to these new areas.

EXHIBIT 3

800 MHz Rebanding
National Capital Region

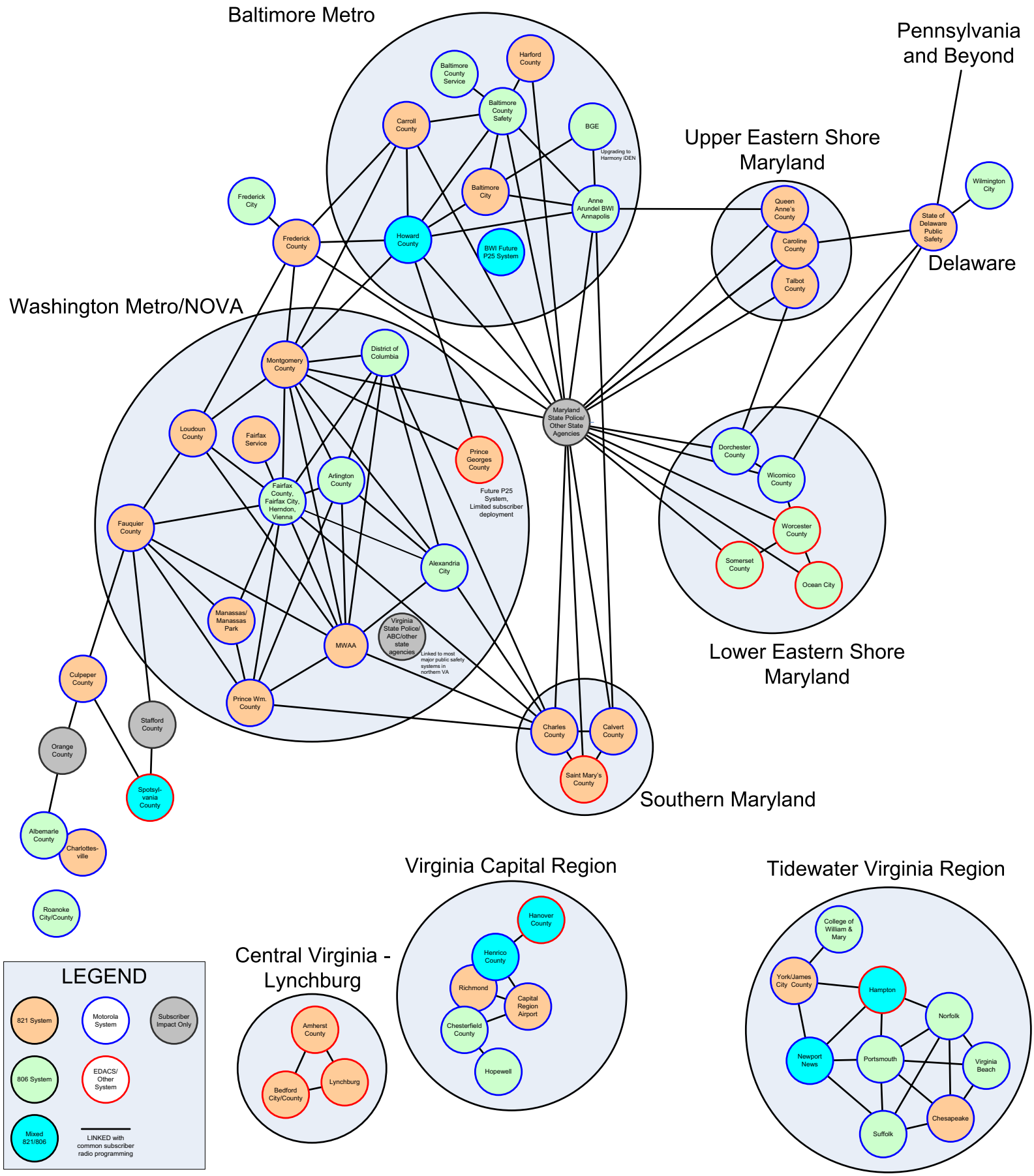


Legend:

- **Stage 1 Infrastructure**
- **Stage 2 Infrastructure**
- **Radio Fleets within the Stage**
- **Radio Fleets Spanning both Stages**

RCC Consultants, Inc. 2006

Maryland–Washington, DC–Virginia-Delaware 800 MHz Voice Radio Interoperability Web



RCC Consultants, Inc.

NOTE: Technically, all the the 800 MHz subscriber radios used in the systems listed above are interoperable, even if not explicitly programmed for direct trunked system access. Each 800 MHz radio has access to the five 800 MHz National Mutual Aid Channels, making it possible to achieve on-the-scene interoperability for virtually any type of public safety incident.

EXHIBIT 4

Maintaining Regional Interoperability During 800 MHz Band Reconfiguration

RCC Consultants – Fairfax County, Virginia

The Problem

- How can we comply with the FCC's 800 MHz R&O and not sacrifice or impair our regional interoperability capabilities?

Our Rebanding Commitment To Our Public Safety Radio System Users

- There shall be no noticeable impact to radio system availability, functionality, performance, coverage, capacity, redundancy and backup mode functionality before, during and after the physical band reconfiguration process for operations on both a user's home system and systems operated by mutual aid partners.

Our Rebanding Commitment To Our Public Safety Radio System Users

- In other words, every time a user presses PTT, their chances of accessing and successfully using the radio systems in our region should be the same regardless of where we are in the physical rebanding process (before, during or after), and regardless of the type of operating environment – traffic stop or terrorist attack, routine EMS call or seven alarm warehouse fire.

Overall Goals and Objectives

- Comply with the FCC 800 MHz Rebanding R&O
- Maintain safe and reliable operations on home radio systems throughout the physical rebanding process
- Maintain safe and reliable operations on systems operated by mutual aid partners throughout the region throughout the physical rebanding process

Two Levels of Rebanding – Systems and Subscriber Radios

- Systems must be rebanded in such a way as to ensure that there is no noticeable impact to radio system availability, functionality, performance, coverage, capacity, redundancy and backup mode functionality, etc.
- Subscriber radios must be rebanded in such a way as to ensure that they can seamlessly adapt to rebanding changes made at the system level, for all linked systems throughout the region

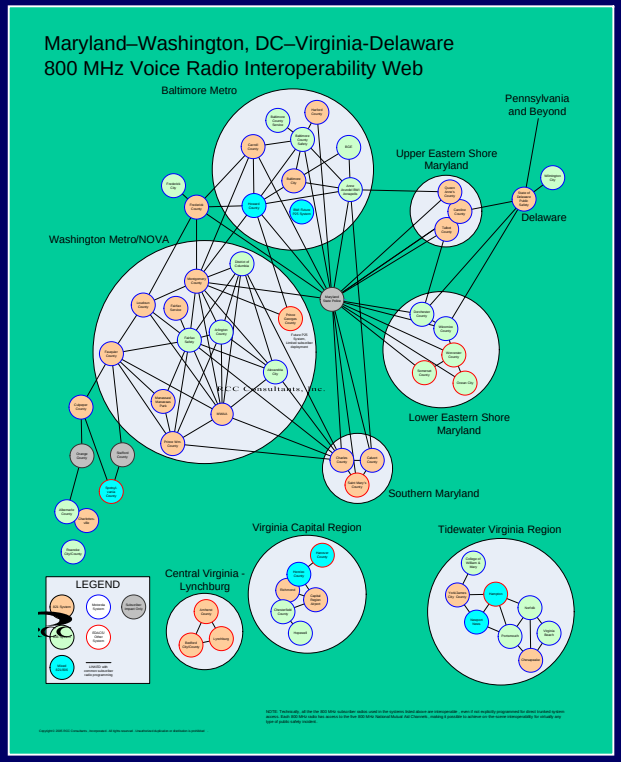
Our 800 MHz Mutual Aid and Interoperability Environment

- Nearly unprecedented level of compatibility, coordination and cooperation
- Shared talkgroup programming at the subscriber radio level – on actual “operations” talkgroups
- “Level 5” Interoperability

Our 800 MHz Mutual Aid and Interoperability Environment

- Estimated as many as 30,000 subscriber radios on 11 systems in the immediate metropolitan Washington region have some level of shared system/talkgroup programming
- A complex “web” of subscriber radios and systems that expands well beyond the immediate metro area

Our 800 MHz Mutual Aid and Interoperability Environment – The “Interoperability Web”



800 MHz Rebanding Phase 1 – Affected Systems

- Fairfax County, Virginia
  - 9 frequencies in the 851-854 MHz range
  - 1 frequency in the 860-861 MHz range
  - 1 system control channel potentially affected

800 MHz Rebanding Phase 1 – Affected Systems

- Arlington County, Virginia
  - No frequencies in the 851-854 MHz range
  - 3 frequencies in the 860-861 MHz range
  - 1 system control channel potentially affected
  - Upgrade to 7.1 System in process

800 MHz Rebanding Phase 1 – Affected Systems

- Alexandria City, Virginia
  - No frequencies in the 851-854 MHz range
  - 1 frequency in the 860-861 MHz range
  - 1 system control channel potentially affected
  - Upgrade to 4.1 System in process

800 MHz Rebanding Phase 1 – Affected Systems

- Washington, DC Fire and EMS 800 MHz
  - 8 frequencies in the 851-854 MHz range
  - 1 frequency in the 860-861 MHz range
  - All 4 system control channels are affected

Potential Impacts of Rebanding to Trunked System and Subscriber Radio Functionality

- Control Channel Redundancy
  - If the Central Site Controller is the brain of a Motorola trunked radio system, the trunking control channel is the voice
- Motorola trunked radio systems operate with four system control channels, one active, and three backup for redundancy

Potential Impacts of Rebanding to Trunked System and Subscriber Radio Functionality

- Control Channel Redundancy
  - When system control channels are affected by rebanding, control channel redundancy is placed at risk
    - Trunking systems in subscriber radios can be programmed with four control channel frequencies
    - Migration requires complicated and risky reduction in number of available control channels to ensure continued subscriber radio access, and multiple subscriber radio reprogramming sessions

Potential Impacts of Rebanding to Trunked System and Subscriber Radio Functionality

- Failsoft Functionality
  - Failsoft provides last-ditch basic emergency radio system if loss of system control occurs
  - Non-trunked Failsoft channels are linked to talkgroups at the subscriber radio level
  - If loss of system control occurs, subscriber radios search for Failsoft activity on the Failsoft channel associated with the talkgroup they are tuned to

Potential Impacts of Rebanding to Trunked System and Subscriber Radio Functionality

- Failsoft Functionality
  - Channels that are retuned at the system level for rebanding will not be available at the subscriber level for Failsoft operation unless subscriber radios are also reprogrammed

Motorola's Subscriber Radio Rebanding Firmware

- Four basic objectives
  - Provide eight control channels per trunked radio system
  - Provide two Failsoft frequencies per talkgroup (or personality)
  - Enable new trunking channel plans to accommodate 12.5 kHz frequency spacing in the 851-854 MHz range
  - Enable new "rebanding bit" detection so subscriber radios will know whether or not the new trunking channel plan should be used for a given system
- Due 2Q06?

What If Rebanding Can't Wait For The Firmware?

- Fairfax County Analysis – assumes rebanding proceeds without new firmware
  - Move of one control channel requires deactivation of the affected control channel at the system level so it will not be assigned by the system until subscriber radios are updated leaving one active and two backup control channels
  - Major Failsoft impact – up to 10 Failsoft channels are potentially impacted – affecting up to 112 talkgroups

Herndon PD Dispatch (HRN DISP)
Herndon PD TAC 1 (HRN TAC1)
Herndon PD TAC 2 (HRN TAC2)
Herndon PD TAC 3 (HRN TAC3)
Herndon PD TAC 4 (HRN TAC4)
Vienna PD Dispatch (VNA DISP)
Vienna PD TAC 1 (VNA TAC1)
Vienna PD TAC 2 (VNA TAC2)
Fairfax City PD Dispatch (FFX DISP)
Fairfax City PD TAC 1 (FFX TAC1)
Fairfax City PD TAC 2 (FFX TAC2)
Fairfax City PD TAC 3 (FFX TAC3)
Fairfax City PD TAC 4 (FFX TAC4)
PSCC (PSCC)
Project Team Main (RAD PROJ)
Radio Shop (RAD SHOP)
Fairfax Public Safety Coordination 1 (COORD1)
Fairfax Public Safety Coordination 6 (COORD6)
Fairfax Public Safety Coordination 2 (COORD2)
Fairfax Public Safety Coordination 7 (COORD7)
Fairfax Public Safety Coordination 3 (COORD3)
Fairfax Public Safety Coordination 8 (COORD8)
Fairfax Public Safety Coordination 4 (COORD4)
Fairfax Public Safety Coordination 5 (COORD5)
Motorola (MOT 1)
MWAA 1 (MWAA)
MWAA 2 (MWAA)
MWAA 3 (MWAA)
MWAA 4 (MWAA)
Headquarters (HQ)
HQ OPS 1 (HQ OPS1)
Motor OPS 2 (MOPS 2)
Motor OPS 3 (MOPS 3)
OSB OPS 3 (OSB OPS3)
Criminal Intelligence Unit 1 (CIU 1)
Criminal Intelligence Unit 2 (CIU 2)
Fair Oaks Dispatch 8 (FAO DISP)
Fair Oaks OPS 1 (FAO OPS1)
Fair Oaks OPS 2 (FAO OPS2)
Sulley Dispatch 1 (CVL DISP)
Sulley OPS 1 (CVL OPS1)
Sulley OPS 2 (CVL OPS2)

Alexandria 1 (ALEX 1)
Alexandria 2 (ALEX 2)
Alexandria 3 (ALEX 3)
Alexandria 4 (ALEX 4)
Alexandria 5 (ALEX 5)
Alexandria 6 (ALEX 6)
Alexandria 7 (ALEX 7)
Alexandria 8 (ALEX 8)
Sheriff ADC Operations (ADC OPS)
Sheriff ADC TAC1 (ADC TAC1)
Sheriff ADC TAC2 (ADC TAC2)
Sheriff Logistics (LOGISTCS)
Sheriff Diagnostic and Treatment (DIAG/TRT)
Sheriff Command Staff (ADC CMD)
Sheriff Satellite Lockups (SAT L/U)
Sheriff SERT (SERT)
Sheriff PRC Operations (PRC OPS)
Sheriff PRC TAC1 (PRC TAC1)
Sheriff PRC TAC2 (PRC TAC2)
Sheriff Community Services (COMM SVC)
Sheriff Command Staff (PRC CMD)
Sheriff Courts Operations (CTS OPS)
Sheriff Courts TAC (CTS TAC)
Sheriff JDR (JDR)
Sheriff Circuit Court (CIR CT)
Sheriff Satellite Courts (STL CT)
Sheriff Facility Security (SECURITY)
Sheriff Administrative Services (ADMIN)
Sheriff Civil Enforcement (CVL ENF)
Sheriff General District Court (GD CT)
Sheriff Courts Command Staff (CTS CMD)
Sheriff Courts Systems (CTS SYS)
DeWitt Hospital (DEWITT)
Trauma (TRAUMA)
Fire Major Incident Command (MI/CMD)
Fire Major Incident Suppression (MI/SUPP)
Fire Major Incident EMS (MI/EMS)
Fire Major Incident Staging (MI/STAGE)
Fire Major Incident Sector 1 (MI/SCT 1)
Fire Major Incident Sector 2 (MI/SCT 2)
Fire Major Incident Sector 3 (MI/SCT 3)
Fire Major Incident Sector 4 (MI/SCT 4)

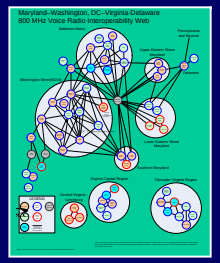
Fire Major Incident Sector 5 (MI/SCT 5)
Fire Major Incident Sector 6 (MI/SCT 6)
Fire Major Incident Rehab (MI/REHAB)
Fire Major Incident Announcement Call (MI/ANNC)
Fire Major Incident HAZMAT (MI/HAZ)
Fairfax Hospital Digital (FFX HOSP)
Fairfax Hospital Digital - Aircare (FFX AIRCARE)
NVHA - Medcom (MEDCOM)
Mt. Vernon Hospital (MTV HOSP)
Reston Hospital (RST HOSP)
Springfield Hospital (MIL HOSP)
Access of Fairfax (ACC FFX)
Access of Reston (ACC RES)
Children's Hospital (CHILDREN)
Fair Oaks Hospital (FKS HOSP)
Fire Incident 3 (4E INC3)
Fire Incident 6 (4H INC6)
Fire Incident 9 (4K INC9)
Fire Incident 2 (4D INC2)
Fire Incident 5 (4G INC5)
Fire Incident 8 (4J INC8)
Analog Police Mutual Aid (OPS 1) (AMA CALL)
Analog Police Mutual Aid (OPS 2) (AMA>FPD2)
Analog Police Mutual Aid (OPS 3) (AMA>FPD3)
Analog Police Mutual Aid (OPS 4) (AMA>FPD4)
School Security Main (SEC MAIN)
School Security TAC (SEC TAC)
School Security TAC 2 (SEC TAC2)

What If Rebanding Can't Wait for the firmware?

- DC Fire/EMS Analysis – assumes rebanding proceeds without new firmware
  - Moving all four control channels requires risky two stage process (deactivation of two control channels at a time, then reprogramming the fleet, then repeating the process for the remaining two control channels), leaving one active and one backup at any given time until rebanding is complete
  - Major potential Failsoft impact – if system is rebanded up to 9 Failsoft channels are impacted – how many talkgroups?

A Regional Rebanding Requirement

- No radio system can be rebanded until all of the subscriber radios that are linked to it are upgraded and reprogrammed such that they can adapt to the changes being made at the system level – and the new subscriber firmware is essential to accomplishing this.



The Prioritization Risk

- The process and schedule developed by the TA does not include provisions for 821 (Phase 2) licensees to submit claims for reprogramming their fleets to adapt to changes made by 806 licensees during Phase 1
  - Considering that every radio in an 821 licensee's fleet is potentially affected, what should they do? What should 806 licensees do to ensure that the mutual aid resources that would come to them to assist in mutual aid or major incidents are fully functional?

The Prioritization Risk

- This is, first and foremost, a problem for the 806 Phase 1 licensees
  - Available mutual aid resources with safe and reliable communications are an “existing facility” that must be made comparable during and after rebanding
- It is also a problem for the 821 Phase 2 licensees
  - Consider the fire chief who may decline to send resources into a neighboring jurisdiction if safe and reliable communications cannot be guaranteed

Regional Interoperability and Rebanding –

Some Perspectives of System Operators and Users

Regional Prioritization Plan vs. the Rebanding Firmware

- The RPP requires the retuning of infrastructure utilizing Lower-120 channels to be separate in time from the retuning of infrastructure utilizing NPSPAC channels
- Nextel has indicated this approach should be maintained, and suggests that Stage 1 should proceed even if rebanding firmware is not ready
- Since the Motorola firmware will likely not available in time, this results in a two-phased retuning:
  - Phase 1 (L-120) retuning without firmware; and
  - Phase 2 (NPSPAC) retuning with firmware

Unacceptable Risks of the Two-phased Approach in the Baltimore – Washington Region

- Without Motorola firmware, serious disruption of service can occur:
  - Trunked mode – Retuned Lower-120 control channels must be turned off until all home and roamer radios are retuned to maintain trunked interoperation. This reduces the number of backup control channels available to a system

Unacceptable Risks of the Two-phased Approach in the Baltimore – Washington Region

- Without Motorola firmware, serious disruption of service can occur:
  - Failsoft mode is unavailable on rebanded Lower-120 channels for any radios (home or roamers) that have not been reprogrammed

Unacceptable Risks of the Two-phased Approach in the Baltimore – Washington Region

- Proceeding with retuning without the Motorola firmware places backup control channel and Failsoft functionality at risk, and will severely impact both local operations and interoperability

Technical Consequences of RPP and Nextel's Approach

- The approach of the RPP and the position of Nextel applied to the Washington, DC Metro Area:
  - not only risks radio systems operations for the technical reasons related to the absence of the required Motorola firmware,
  - but also creates the greatest potential for the disruption of public safety operations because of the additional programming steps
- The approach of the RPP and the position of Nextel will require additional rounds of fleet programming with consequences in terms of taking police, fire, and EMS off the street to retune or exchange radios
- Each iteration of subscriber equipment programming or changes, even if only minutes were required, results in lost person years of the time of public safety personnel in Metro Washington

Certification Conflict

- Plans submitted must provide comparable facilities with minimum disruption
- The Estimate to reband must be the minimum cost to achieve the above
- If a licensee knows the cost of “Plan A” is more than “Plan B”, then the licensee, under penalty of perjury, cannot certify that the “Plan A” estimate is the minimum cost if they know that a “Plan B” estimate costs less
- However…

Procedural Consequences of RPP and Nextel's Approach

- The RPP and Nextel's approach would require a two phase plan in the Baltimore – Washington Region
- Infrastructure Cost Certification Conflict exists - Licensees cannot provide the minimum cost certification since a one-phase plan costs less than a two-phase plan
- Subscriber Cost Certification Conflict exists - Licensees cannot provide the minimum cost certification since a one-phase plan costs less than a two-phase plan
- Alternatives that avoid these consequences are required

Alternative 1: Two phases, with new firmware

- Resolves technical disruption issue (because capacity is not impacted, and interoperability and Failsoft functionality are maintained); and
- Reduces the increased costs associated with multi-phase subscriber unit retuning, but
- Does not affect the additional cost of two-phase retuning of radio systems with infrastructure utilizing Lower-120 and NPSPAC channels.

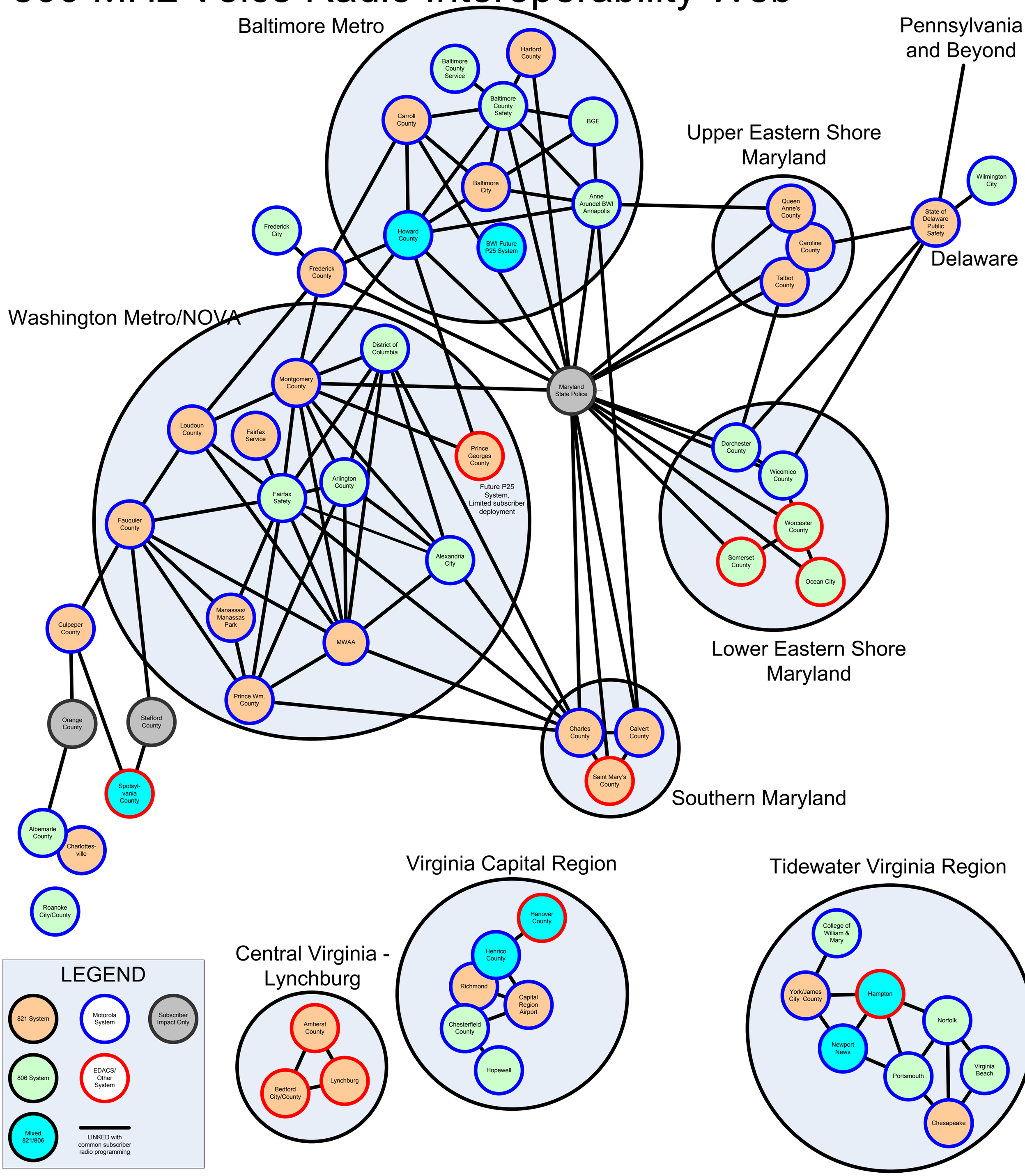
Alternative 2: One-phase, with new firmware

- Resolves disruption issue (in the same manner as Alternative 1)
- Eliminates the increased cost of multi-phase subscriber unit retuning
- Eliminates the additional cost of multi-phase retuning of radio systems with infrastructure utilizing Lower-120 and NPSPAC channels

Rebanding in the National Capital Region

- Rebanding all subscriber radios first, then systems in a one-phase approach is the most effective way to ensure continuity of service and interoperability
- Rebanding can and must be accomplished without sacrificing interoperability, availability, reliability and backup mode functionality

Maryland–Washington, DC–Virginia-Delaware 800 MHz Voice Radio Interoperability Web



RCC Consultants, Inc.

NOTE: Technically, all the the 800 MHz subscriber radios used in the systems listed above are interoperable, even if not explicitly programmed for direct trunked system access. Each 800 MHz radio has access to the five 800 MHz National Mutual Aid Channels, making it possible to achieve on-the-scene interoperability for virtually any type of public safety incident.

Questions and Discussion

EXHIBIT 5

FAIRFAX COUNTY
V I R G I N I A

DEPARTMENT OF INFORMATION TECHNOLOGY
12000 Government Center Parkway, Suite 527
Fairfax, Virginia 22035

September 16, 2005

Mr. Brett S. Haan
800 MHz Transition Administrator
c/o Squire, Sanders & Dempsey, LLP
8000 Towers Crescent Drive, 14th Floor
Tysons Corner, Virginia 22181-2700

Re: Regional Prioritization Plan of the 800 MHz Transition Administrator, *In the Matter of Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55; Request From Fairfax County, Virginia, for Deferred Implementation of Certain Elements of the Regional Prioritization Plan

Dear Mr. Haan:

I am writing on behalf of Fairfax County, Virginia, and on behalf of those other Virginia localities, including the City of Fairfax and the Towns of Herndon and Vienna, that regularly utilize the radio system provided and maintained by Fairfax County and on behalf of the many other localities in the Washington-Baltimore area that utilize our radio system and each others' radio systems for emergency communications to request that the Transition Administrator approve the deferrals described below.[1] The requested deferrals are within the scope of the

[1] The County is licensed under WNAJ365 and KNIH412 (Public Safety 806 system) and WNYZ447 and WQCP394 (Public Service NPSPAC channels). The County and other localities within the Washington-Baltimore area operate public safety radio systems that utilize both Channels 1-120 and NPSPAC channels, and the Transition Administrator's *800 MHz Reconfiguration Handbook* recognizes that such systems will require customized reconfiguration plans to minimize disruption. *Handbook*, p. 17 (Release 1.1 June 3, 2005). While the County does not purport to speak for the many other localities within the Washington area, we note that the District of Columbia, the City of Alexandria, and the County of Arlington are similarly adversely affected by the requirement to move forward with Stage 1 reconfiguration at a time and in a way that will compromise existing regional radio interoperability. We also note that our concerns are shared and that this request is supported by staff representatives of the localities listed in Exhibit 3 – The Concerned Licensees. All these localities are located within National Public Safety Planning Advisory Committee Region 20.

authority conferred on the Transitional Administrator by the Federal Communications Commission ("FCC") pursuant to *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, FCC 04-294, ¶ 72 (adopted Dec. 22, 2004) ("Supplemental Order"). For the reasons stated below, we believe that these deferrals offer the only reasonable and cost effective approach that (1) will maintain comparable public safety radio facilities that will preserve the extensive and essential interoperability now available to public safety responders within the Washington-Baltimore area; (2) will minimize service disruptions during the physical rebanding process; and (3) will require the minimum funds necessary to achieve comparable facilities during and after the transition period.[2]

Introduction

At the outset, we are pleased that you and your staff attended the meeting on September 1, 2005, to hear the concerns of the Washington-Baltimore area public safety radio 800 MHz Wave 1 licensees ("Concerned Licensees") regarding the implementation of spectrum reconfiguration under the current Regional Prioritization Plan of the 800 MHz Transition Administrator ("RPP"). We also are grateful for the attendance of the Nextel representatives who are copied on this letter. By the time you receive this request, the Concerned Licensees will have met four times as a full group and in numerous smaller sessions. Because of the importance of this issue, we also plan to contact the Wireless Telecommunications Bureau of the FCC for the purpose of offering the Bureau a briefing on the matters addressed by this request.

Summary

The County, on behalf of itself, those localities that regularly use our radio system, and those other localities who utilize our radio system and each others' radio systems for emergency communications, asks that the Transition Administrator approve these actions:

- The rescheduling of the implementation configuration by the County and the other licensees in the Washington-Baltimore area, who are presently scheduled in the RPP to be reconfigured in Stage 1 of Wave 1, to permit the County and other licensees to reconfigure simultaneously with those other localities in the Washington-Baltimore area, without regard to their positions in Stage 1 or Stage 2 of Wave 1;

[2] While all three factors are important for this transition to new radio frequencies, the first factor, the preservation of effective communications by public safety agencies, is of paramount importance. The FCC has gone forward and ordered the 800 MHz rebanding as a means of improving public safety communications, and the FCC has recognized the importance of this objective on many occasions. *See, e.g.*, Report and Order, Fifth Report and Order. Fourth Memorandum Opinion and Order, and Order, FCC 04-169, ¶ 338 (adopted July 8, 2004) (citing 47 U.S.C. § 151), *and* Supplemental Order, FCC 04-294, ¶ 91 (stating that there may be no matter within the FCC's jurisdiction more crucial to Homeland Security and the overall general safety of life and property than assuring that public safety communications are free from unacceptable interference and have adequate capacity).

- The reconfiguration process not begin until 90 days following the delivery by Motorola of sufficient quantities of certain firmware and related software, which, according to the vendor, will not be available before April 2006 at the earliest; and which must be field-tested before full-scale deployment; and

- Suitable adjustments be made in the scheduled periods for voluntary and mandatory negotiations with Nextel.

The County and the overwhelming majority of Concerned Licensees operate radio systems that are dependent on Motorola equipment and software. The rebanding firmware and software under development at the vendor company would greatly simplify the task of reconfiguring literally tens of thousands of public safety radios now in use within the Washington-Baltimore area, and we believe this firmware is essential if reconfiguration of Concerned Licensees' systems is to proceed safely, reliably, and on a cost-effective basis. For the reasons detailed below, the risks and potential liabilities of proceeding with the implementation of the physical rebanding process without the new Motorola firmware and software far outweigh the disadvantages of the modest scheduling deferral we request.

The most immediately affected of the Concerned Licensees in the current RPP are those occupying Channels 1-120 in the 806-809 MHz segment of the spectrum and assigned to Stage 1 of Wave 1. These include the District of Columbia and Fairfax County, Virginia. But this vulnerability spreads to the rest of the localities through a broad network of interoperability functionality that links the Concerned Licensees in a critical web of emergency communications that cross jurisdictional boundaries. The maintenance of these linkages are the most important reason for simultaneous, regional reconfiguration, but the higher costs in dollars and the additional disruption to operations that would be caused by proceeding in two separate stages are significant additional reasons for this request.[3]

Under the current RPP, the deadline for completion of voluntary negotiations is September 27, 2005, and mandatory negotiations are scheduled to begin thereafter. That schedule presents critical problems for the County and for a number of other area licensees. More specifically, because of the two stages per wave transition schedule in the RPP, and because of the need to secure efficient firmware from a private vendor, which is not yet tested and available, the County and certain other licensees cannot prepare a Statement of Work for a

[3] On the afternoon of January 13, 1982, Washington area public safety agencies were confronted, simultaneously, by the crash of Air Florida Flight 90 into the 14th Street Bridge, by an underground subway accident, and by a powerful snowstorm. Following that horrific experience, public safety agencies in the Washington-Baltimore area placed great emphasis on establishing and maintaining radio interoperability between public safety agencies. That emphasis later paid benefits during response by many area public safety agencies to the terrorist attack on the Pentagon on September 11, 2001, and following that attack, public safety agencies have placed even greater emphasis on interoperability. The public safety agencies in the Washington-Baltimore area now benefit from an exceptional, if not unsurpassed, level of public safety agency interoperability. That is an essential feature for effective public safety response in the national Capitol region.

Stage 1 Wave 1 reconfiguration that would be able to maintain comparable facilities with minimal disruption and at a reasonable minimum cost. If the request of the Concerned Licensees is granted, adjustments to the present negotiation schedule obviously will be needed. Accordingly, if possible, we respectfully ask for your answer by Friday, September 23, 2005.

The Problem

Redundancy. The Motorola radio system infrastructure employed by the Concerned Licensees utilizes (1) one or more Central Site Controllers which contain the essential intelligence of the system and (2) the Trunking Control Channels to express the commands from the active Central Site Controller to all subscriber radio units operating in the field. Because of the importance of the availability of the Trunking Control Channel to the functioning of the system, Motorola has designed the system with one active control channel and three back-up control channels. At present, Motorola subscriber radios can be programmed with a maximum of four channels.[4]

If one or more of the control channels utilized in the Motorola radio system infrastructure is retuned,[5] subscriber radios will no longer have access to all four control channels and will lose some or all of their redundant control channel capability. Not until all subscriber radios are themselves retuned to match the control channels will full capability be restored. As discussed further below, "full capability" must include not only the subscriber radios native to the system but also those radios in other jurisdictions linked to the retuned system via "talk groups."[6]

Therefore, at present, it is impossible to retune these Motorola radio systems without reducing the number of control channels available to ensure uninterrupted system access to users. The reduction in the availability of control channels cannot be eliminated by any presently available means. To take one or two control channels down at a time for retuning, then reprogram the subscriber radios to match, is neither safe nor cost-effective. This would require serial reprogramming of the radio system infrastructure and hundreds, if not thousands, of native and talk group-linked radios.

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[4] Motorola does not offer a method of reprogramming subscriber radios over the air. The reprogramming of a Motorola subscriber radio today requires retuning of individual radios by trained technicians.

[5] For the purposes of this letter, the words "retune," "retuning," and "retuned" mean the process by which trunked radio system fixed end and subscriber radio equipment is reprogrammed, reconfigured, and equipped with new firmware or software so that it is made ready to operate on newly assigned 800 Mhz frequencies in accordance with the FCC's requirements.

[6] For the purposes of this letter, "talk groups" refers to the logical groupings of users on a trunked radio system to a single virtual talk path, assigned and managed dynamically by the trunking system control hardware, such that these groups of users are able to communicate with each other, as an entire group, on a given trunked radio system, in connection with the performance of their duties as public safety professionals.

Failsoft. Failsoft functionality provides last-ditch basic emergency radio systems capacity if overall radio system control is lost. Failsoft functionality depends upon the linking of particular channels which are not trunked to particular talk groups of subscribers. That critical link is established in the programming of the subscriber units. This is done before the unit is issued to a particular user and depends upon the membership of that user in a particular talk group.

At present, Motorola subscriber radios can be programmed with only one failsoft channel for each talk group. As in the control channel example above, if one or more of the radio channels utilized in the Motorola radio system infrastructure is retuned, those subscriber radios which had been programmed to seek the channel[s] in failsoft mode will no longer be able to find them. Not until all native and talk group-allied radios also have been retuned will failsoft capability be restored.

Talk Groups and Interoperability. We have enclosed Exhibit 1 which shows the "interoperability web" currently linking public safety agencies in the Washington-Baltimore area. This web links an estimated 48,000 subscriber radios on 18 systems in the depicted area on some level of shared or talk group programming. The channels used for these linkages exist in both the 806-809 ("Stage 1") and 821-824 MHz ("Stage 2," NPSPAC) segments of the broadcast spectrum.[7]

For example, Fairfax County subscriber radios used by their fire and rescue services units may include up to 128 talk groups or channels from 8 neighboring jurisdictions, and Montgomery County, Maryland, makes room for 144 from 9 jurisdictions, and the District of Columbia makes room for 96 talk groups from 6 jurisdictions. If retuning in Stage 1 is limited to systems currently using Channels 1-120 at 806-809 MHz, then that retuning will "miss" those Stage 2 systems that participate in Stage 1 system talk groups. The change in frequencies for the Stage 1 systems will not be picked up on the Stage 2 systems until months later. Conversely, changes in NPSPAC frequency assignments during Stage 2 will need to be retrofitted – serially retuned – into Stage 1 systems.

Systems using frequencies at both 806-809 and NPSPAC under the two stages per wave approach will incur additional costs and face additional disruption because of the need to retune their systems twice. This fact alone is a very strong reason to combine the Stage 1 and Stage 2 reconfigurations in the Washington-Baltimore area. However, the mutual interdependence of public safety agencies now using interoperable Stage 1 and Stage 2 systems is far more important, and the best way to maintain these interoperability functions is to retune these radio systems in a single stage.

Disproportionate Disadvantages for Concerned Licensees. Because of the importance of the greater Washington-Baltimore area and the linked public safety agencies to the security of

[7] Under the current RPP, Stage 1 of Wave 1 involves clearing current licensees from the 806-09 band in order to make room for NPSPAC licensees moving down ("Stage 2") from NPSPAC 821-24.

the national homeland,[8] this area features one of the country's most developed interoperability networks. It would be extremely unwise, we believe, to risk this achievement by tolerating any loss of redundancy or failure-mode adaptation in the thousands of radios at risk. In addition, if those licensees who are assigned to Stage 1 of Wave 1 are ordered to proceed without the expected benefits of the Motorola firmware and software, which are discussed below, then those licensees would be placed at a significant disadvantage in comparison with those licensees in other areas who can expect to have the benefit of this firmware when they are scheduled to change radio frequencies.

Motorola Firmware and Software

The proposed new Motorola firmware release is designed to eliminate the programming limitations applicable to existing subscriber units and to make available certain additional features critical to the smooth and expeditious implementation of the physical rebanding process. The Concerned Licensees have been in touch with Motorola and have confirmed that the anticipated date for delivery of the firmware (and related software) is no earlier than April of 2006. See Exhibit 2. We understand that the new firmware involves:

- The provision of eight control channels for each Motorola trunked radio system;
- The provision of two failsoft channels for each talk group or subscriber unit personality; and
- The enabling of new trunked channel plans for the trunked controller to broadcast 12.5 KHz channel spacing in the 851-854 MHz range.[9]

New Motorola firmware and software is expected to include a "rebanding bit" that will be broadcast on a system control channel, and that will enable subscriber radios to know whether the new or the old trunked channel plan should be used for the particular system on which the subscriber unit finds itself operating. While these new products from Motorola will not eliminate altogether the losses of radio system capacity, redundancy and failure recovery described above or other potential risks inherent in the rebanding process, we believe the availability of that firmware will mitigate the potential risk and reduce the potential liability that could arise as a consequence of proceeding under the current RPP schedule.

Risks and Liabilities

Additional Costs. Because of the schedule set forth in the RPP and the timing of the availability of the new Motorola firmware, if these deferrals are not granted, Fairfax County and certain other 800 MHz Public Safety Licensees will be required to retune their subscriber units:

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[8] See footnote 3, *supra*.

[9] This is important because the present 806-809 MHz channel allocations use 25 KHz channel spacing, while the new 806-809 MHz allocation for the NPSPAC band calls for 12.5 KHz spacing.

- At least twice, and possibly more times, in connection with Stage1 of Wave 1; and

- At least twice and possibly more times in connection with Stage 2 of Wave 1.

The inevitable effect of additional retuning is to impose additional costs upon the entire 800 MHz rebanding process. These are not measured in dollars alone. The more critical criteria are system and personnel performance losses not easily quantified.

The two stages per wave approach of the RPP also impose additional infrastructure retuning costs upon certain 800 MHz licensees. The additional costs arise as a result of the separation in time under the RPP of the retuning of the Lower 120 Channels from the retuning of the NPSPAC Channels and those Expansion Band Channels as to which licensees have not exercised their option to remain in the Expansion Band.

Certification Problems. The additional costs imposed by the two-staged structure of the RPP and a schedule that does not wait for the release of importance firmware make it very difficult, if not impossible, for affected 800 MHz licensees to prepare a detailed and reasonable Statement of Work ("SOW") that can provide the certification of minimum costs required by the FCC in connection with the 800 MHz rebanding. For example, if Fairfax County were to proceed, and if Fairfax County were to insist that full capabilities, including all present interoperability functions, be fully maintained, then any such transition by Fairfax County would necessarily require adjustments to thousands of subscriber radios owned by other jurisdictions. Fairfax County cannot reasonably expect that any such scenario would ever occur.

Two Possible Solutions

One approach, Alternative Solution 1, to the problems that threaten to disrupt the public safety radio systems and the public safety operations of the Concerned Licensees would be to retain the two stages per wave approach of the RPP and not to proceed with the physical rebanding process until the new Motorola firmware is available and field- tested. Another approach, Alternative Solution 2, would be to eliminate the two stages per wave approach of the RPP and not to proceed with the physical rebanding process until the new Motorola firmware is available and field-tested.

Alternative Solution 1:

- Resolves the disruption issue insofar as the potential for disruption is a function of the unavailability of the new Motorola firmware;

- Eliminates the disruption issue insofar as the potential for disruption is a function of the procedural gaps in the Regional Prioritization Plan; and

- Reduces the problem of the additional costs imposed by the RPP upon the 800 MHz Rebanding insofar as those costs relate to the retuning of subscriber units.

Alternative Solution 2:

- Has the advantages of Solution 1, but also

- Eliminates the problem of the additional costs imposed by the RPP upon the 800 MHz rebanding insofar as those costs relate to the retuning of infrastructure equipment; and

- Reduces the difficulty for certain 800 MHz licensees of preparing a reasonable SOW and providing the required certification.

Under either alternative, extensions and adjustments will need to be made to the present RPP schedule for voluntary and mandatory negotiations between Nextel, and each of the Concerned Licensees.

Request for Relief

For the reasons stated above, the Concerned Licensees ask that:

- Fairfax County, Virginia, and similarly situated Stage 1 licensees be reconfigured simultaneously with Stage 2 licensees, without regard to their positions in Stage 1 or Stage 2 of the RPP for Wave 1.

- This process not begin until 90 days following the delivery by Motorola of sufficient quantities of certain firmware and related software for both infrastructure and subscriber radio units that have been field-tested successfully prior to deployment.

- Suitable adjustments be made in the periods for voluntary and mandatory negotiations with Nextel.

We think that these requested deferrals will provide a smoother and less expensive transmission that should benefit the affected public safety agencies, Nextel and the public. If you have any questions, please feel free to contact me.

Respectfully submitted,

David J. Barney
FCC Transition Point of Contact, and
Branch Chief
Emergency Communications
Fairfax County, Virginia
Telephone: 703-324-3833
E-Mail: David.Barney@FairfaxCounty.Gov

Enclosures: Exhibit 1: Regional Interoperability Map
Exhibit 2: Correspondence from Motorola
Exhibit 3: List of Concerned Licensees

cc: Michael Wilhelm, Chief, Public Safety and Critical Infrastructure Division,
Wireless Telecommunications Bureau, Federal Communications Commission
Members, Board of Supervisors, Fairfax County, Virginia
Anthony H. Griffin, County Executive, Fairfax County, Virginia
David J. Molchany, Chief Information Officer, Fairfax County, Virginia
Robert A. Stalzer, Deputy County Executive
David P. Bobzien, County Attorney, Fairfax County, Virginia
Wanda M. Gibson, Director, Fairfax County Department
of Information Technology
Michael P. Neuhard, Chief, Fairfax County Department of Fire and Rescue
David Rohrer, Chief, Fairfax County Police Department
Bill Jenkins, Director, Spectrum Group, Nextel
Kelly Howell, Senior Strategy Manager, Spectrum Group, Nextel

Exhibit 1
Maryland–Washington, DC–Virginia
800 MHz Voice Radio Interoperability Web

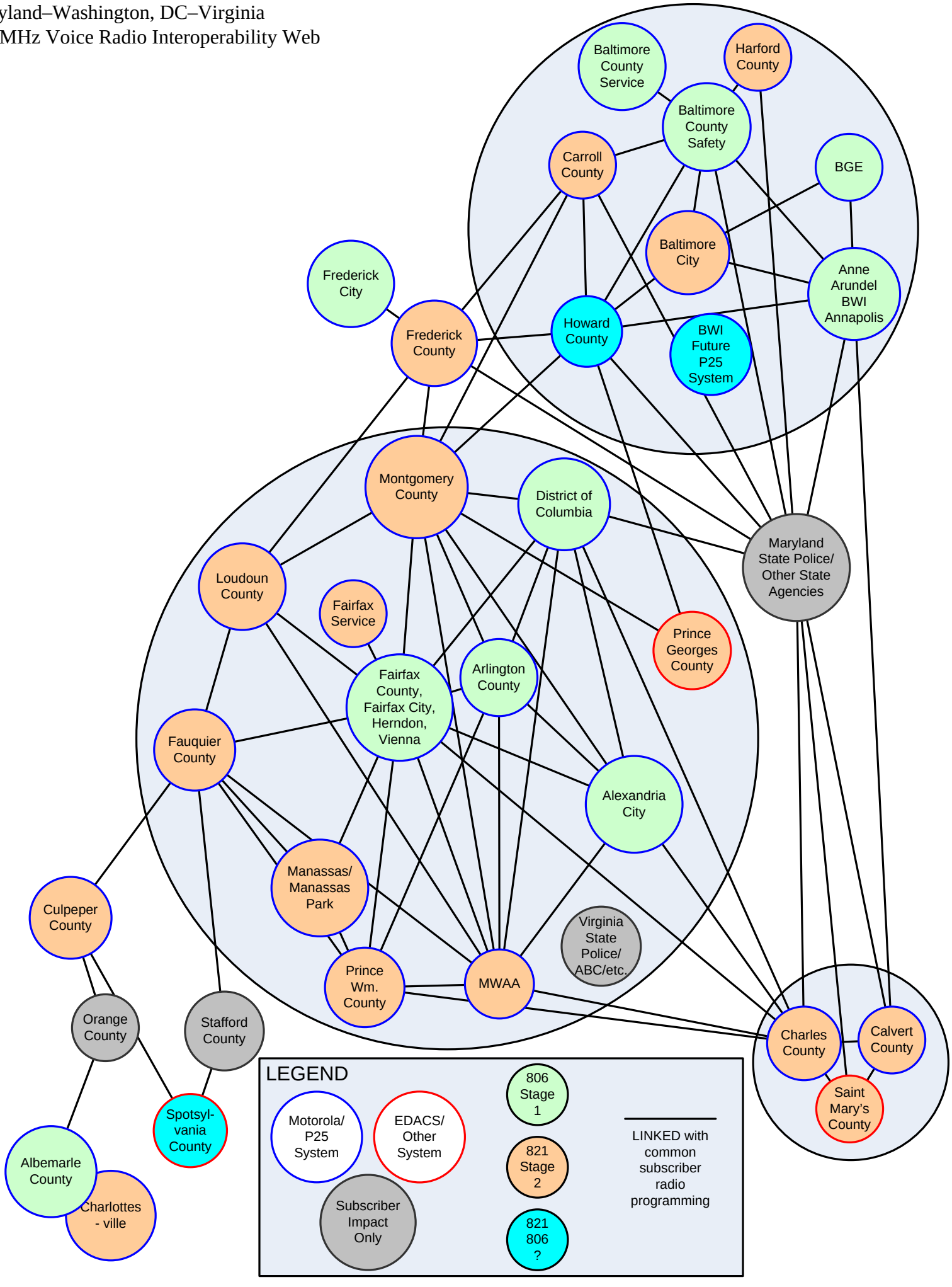


Exhibit 2 – Correspondence from Motorola

From: JACKSON CHUCK-CSLD23 [mailto:Chuck.Jackson@motorola.com]
Sent: Tuesday, September 06, 2005 11:18 PM
To: Barney, Duff
Subject: RE: Rebanding Firmware Question from the National Capitol Region

Dear Mr. Duff

First I would like to apologize for the tardy response. I had communicated with and participated with the field teams in the response to questions from your consulting firm. I believed it covered the same questions only in more detail. After reviewing the material it was clear I had not provided answered your questions.

Below I have provided a response to your questions.

If I can provide any additional information, (quicker next time) please let me know.

Best Regards

Chuck Jackson

MCEI Vice President and Director
Systems Operations

From: Barney, Duff [mailto:DBarne@fairfaxcounty.gov]
Sent: Wednesday, August 17, 2005 2:29 PM
To: Grube Gary-CTNK01
Cc: JACKSON CHUCK-CSLD23
Subject: Rebanding Firmware Question from the National Capitol Region

Dear Mr. Grube,

Trunked public safety radio system operators in the Mid-Atlantic and National Capital Regions are continuing their efforts to develop transition plans to ensure smooth and trouble free implementation of the FCC's 800 MHz Rebanding Report and Order. A major part of this effort is preserving the extensive interoperation and mutual aid communications capabilities that we have worked so hard to establish over the past ten years. At a joint meeting on August 17th, 2005, system operators in this region have identified two important questions for Motorola in connection with these efforts.

For purposes of responding to these two questions, Motorola should assume that we are referring to a large metropolitan region with seventeen or more separate Motorola 800 MHz trunked public safety radio systems, and approximately 30,000 subscriber radios that are linked to some or all the aforementioned radio systems.

1. Will Motorola confirm that the "subscriber radio rebanding firmware", currently under development by Motorola, is required in order to properly reband (by providing sufficient additional control channel frequency and Failsoft frequency fields) a large fleet of Motorola subscriber radios while maintaining full Failsoft functionality and control channel redundancy during the physical rebanding process of a Motorola 3600 baud control channel trunked radio system?

Response: Rebanding firmware and software will be necessary for any Motorola Trunked system or individual radio to operate on "new" NPSPAC channels at 806 MHz. The new software has two fail-soft channels and eight control channels.

2. Will Motorola provide the earliest date that this firmware will be released for deployment?

Response: Delivery of rebanding software and firmware is anticipated in April 2006. We are currently on schedule to that date.

Very truly yours,

David J. Barney, ENP
Branch Chief, Emergency Communications
Fairfax County Department of Information Technology
12000 Government Center Parkway, Suite #361
Fairfax, VA 22035
703-324-3833
david.barney@fairfaxcounty.gov

Member Jurisdictions Making Request to Motorola:

Alexandria, VA
Arlington County, VA
Baltimore, MD
Baltimore County, MD
Charles County, MD
District of Columbia
Fairfax County, VA
Fauquier County, VA
Frederick County, MD
Howard County, MD
Loudoun County, VA
Manassas, VA
Metropolitan Washington Airports Authority
Montgomery County, MD
Prince Georges County, MD
Prince William County, VA
Vienna, VA

Exhibit 3 – Coalition of Concerned Licensees

This Coalition of Concerned Licensees today includes representatives of the following public safety licensees. In addition, the Coalition includes numerous representatives of public safety user agencies from the affected systems.

County of Fairfax, Virginia
County of Arlington, Virginia
City of Alexandria, Virginia
The District of Columbia
Metropolitan Washington Airports Authority
County of Prince William, Virginia
City of Manassas, Virginia
County of Fauquier, Virginia
County of Loudoun, Virginia
County of Montgomery, Maryland
County of Howard, Maryland
County of Frederick, Maryland
County of Carroll, Maryland
County of Baltimore, Maryland
City of Baltimore, Maryland
County of Harford, Maryland
County of Anne Arundel, Maryland
County of Charles, Maryland

EXHIBIT 6

5. **Loaned Reconfiguration Equipment:** If needed in order to facilitate the Incumbent's transition to the Replacement Frequencies, Nextel will loan any equipment identified in Schedule D as "Loaned Reconfiguration Equipment". Nextel will deliver any Loaned Reconfiguration Equipment to Incumbent in accordance with Schedule D. Any Loaned Reconfiguration Equipment will be returned to Nextel by Incumbent prior to the Closing Date.

6. **Retuning Cooperation:** For purposes of this Section, the "Current Program Completion Date" shall mean June 26, 2008 or such other date as may be established by the FCC for the completion of the Reconfiguration. The Parties acknowledge that the number of frequencies and locations covered by this Agreement will require the Incumbent to cooperate closely with its interoperability partners ("Participating Regional Licensees") in performing their respective reconfiguration activities. Incumbent will synchronize the retune of Incumbent's system with the regional coordinator (the "Regional Coordinator") designated in the Regional Planning and Coordination Agreement that will be entered into by the Regional Coordinator and Nextel (the "Regional Planning and Coordination Agreement"), which agreement shall require approval by the TA. Incumbent will be solely responsible for coordinating the retune with the Regional Coordinator. This coordination will include, but not be limited to, maintaining periodic contact with the Regional Coordinator to allow Incumbent to remain cognizant of the Regional Coordinator's retune schedule and complying with the deadlines set forth in the Preliminary Master Schedule and the Master Schedule developed pursuant to the Regional Planning and Coordination Agreement (the "Preliminary Master Schedule" and "Master Schedule," respectively), which schedules shall require approval by the TA. Generally, the reconfiguration process will entail the retuning of Incumbent's mobile and portable units to accommodate both the Incumbent Frequencies and the Replacement Frequencies; the reconfiguration of Incumbent's base station infrastructure (sites) from the Incumbent Frequencies to the Replacement Frequencies; and a second retuning of Incumbent's mobile and portable units to remove the Incumbent Frequencies and shall proceed as follows: (i) Incumbent agrees to begin the replacement or reflashing of its mobile and portable units in accordance with the dates established in the Preliminary Master Schedule or the Master Schedule, which dates may change from time to time as the Master Schedule is updated to reflect the status and progress of other Participating Regional Licensees, (ii) the Parties further agree that Incumbent may commence such other activities associated with the reconfiguration of its system as further detailed on Schedule C hereof upon the approval of this Agreement by the TA; and (iii) the Parties shall make the FCC filings, clear the Replacement Frequencies and decommission the Incumbent Frequencies as provided in this Agreement and in accordance with the dates established in the Master Schedule, which dates may change from time to time as the Master Schedule is updated to reflect the status and progress of other Participating Regional Licensees. The Parties agree to adopt the Preliminary Master Schedule by July 31, 2007 or 45 days after the Effective Date of this Agreement, whichever is later. The Preliminary Master Schedule will be based upon the schedule that the Participating Licensees presented to the Transition Administrator on March 16, 2006, updated to reflect current assumptions and events, and shall reflect the parties' good faith estimate of the timeframes within which rebanding will occur, including the date by which the Master Schedule will be finalized. The Parties further agree to adopt the Master Schedule within 45 days of its publication pursuant to the Regional Planning and Coordination Agreement. In the event the completion date in the Preliminary Master Schedule and/or the Master Schedule for the reconfiguration of Incumbent's system extends beyond the Current Program Completion Date, the completion date will require a waiver from the FCC. The Parties acknowledge that, depending on the timing of the adoption of the Master Schedule, the submission of a Change Notice in accordance with Section 9 and/or an Amendment to this Agreement may be required.

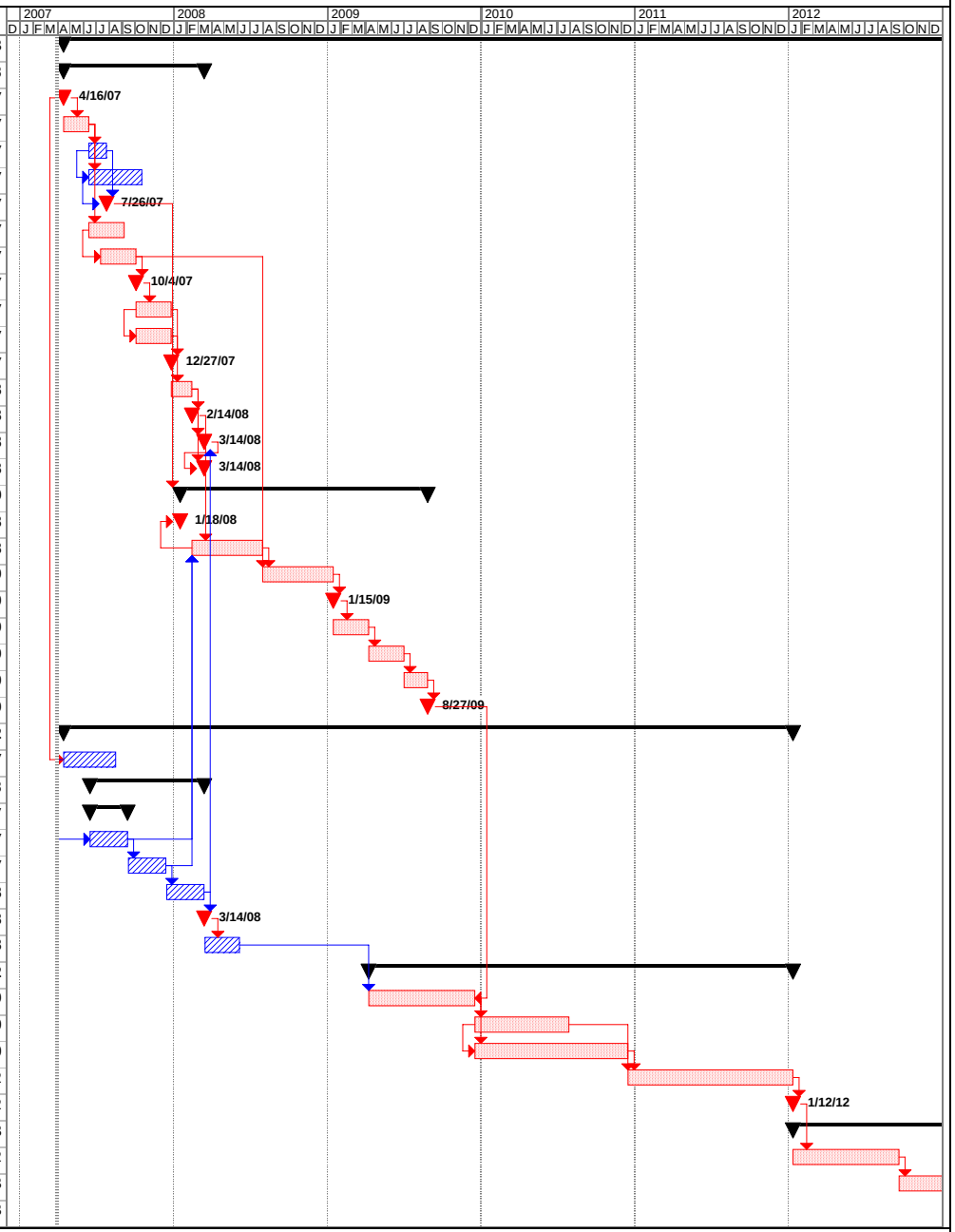
7. **Representations and Warranties:**

EXHIBIT 7

County of Fairfax and Participating Regional Licensees Regional Rebanding Project

Motorola

ID	Task Name	Duration	Start	Finish
1	**Participating Region Licensees Regional Rebanding Plan**	**1509 days**	**Mon 4/16/07**	**Thu 1/24/13**
2	**Phase 1 - Regional Planning**	**240 days**	**Mon 4/16/07**	**Fri 3/14/08**
3	Contract Execution / NTP	0 days	Mon 4/16/07	Mon 4/16/07
4	Contractor Mobilization (60 Cal Days)	44 days	Mon 4/16/07	Thu 6/14/07
5	Regional Rebanding Scope Development	30 days	Fri 6/15/07	Thu 7/26/07
6	Initial Master Plan Schedule Development	90 days	Fri 6/15/07	Thu 10/18/07
7	Regional Rebanding Kickoff Meeting	0 days	Thu 7/26/07	Thu 7/26/07
8	Develop Template Data Input Survey Tool	60 days	Fri 6/15/07	Thu 9/6/07
9	Develop Rebanding Template Database	60 days	Fri 7/13/07	Thu 10/4/07
10	Submit FleetMap Data Input Survey Tool to Licensees	0 days	Thu 10/4/07	Thu 10/4/07
11	Receive FleetMap Data from Licensees	60 days	Fri 10/5/07	Thu 12/27/07
12	Conduct Template Database Testing	60 days	Fri 10/5/07	Thu 12/27/07
13	**Subscriber Template Lockdown**	0 days	Thu 12/27/07	Thu 12/27/07
14	Template Data Input & Verification	35 days	Fri 12/28/07	Thu 2/14/08
15	Template Database Development Complete	0 days	Thu 2/14/08	Thu 2/14/08
16	Final BaseLine Master Plan Complete	0 days	Fri 3/14/08	Fri 3/14/08
17	Phase 1 - Regional Planning Phase Complete	0 days	Fri 3/14/08	Fri 3/14/08
18	**Phase 2 - Subscriber Template Development**	**420 days**	**Fri 1/18/08**	**Thu 8/27/09**
19	Submit Phase 2 Reconfiguration Proposal	0 days	Fri 1/18/08	Fri 1/18/08
20	Conduct Subscriber Template Reads	120 days	Fri 2/15/08	Thu 7/31/08
21	Develop Rebanding Impact Reports	120 days	Fri 8/1/08	Thu 1/15/09
22	Submit Template Impact Reports to Licensees	0 days	Thu 1/15/09	Thu 1/15/09
23	Licensees Review & Verification of Template Impact Reports	60 days	Fri 1/16/09	Thu 4/9/09
24	Build New Radio Templates	60 days	Fri 4/10/09	Thu 7/2/09
25	Radio Template Test & Verification	40 days	Fri 7/3/09	Thu 8/27/09
26	Radio Template Development Complete	0 days	Thu 8/27/09	Thu 8/27/09
27	**Participating Regional Licensees Member Rebanding Project**	**1239 days**	**Mon 4/16/07**	**Thu 1/12/12**
28	**Agency PFA Negotiation Phase**	90 days	Mon 4/16/07	Fri 8/17/07
29	**Planning (PFA) Proposal**	**195 days**	**Mon 6/18/07**	**Fri 3/14/08**
30	IM Study / Determination	**65 days**	**Mon 6/18/07**	**Fri 9/14/07**
31	New Frequencies Identified	65 days	Mon 6/18/07	Fri 9/14/07
32	Suitability Assessment Complete	65 days	Mon 9/17/07	Fri 12/14/07
33	Complete FRA Proposal	65 days	Mon 12/17/07	Fri 3/14/08
34	FRA Proposal Complete	0 days	Fri 3/14/08	Fri 3/14/08
35	**Agency FRA Negotiation Phase**	**60 days**	Mon 3/17/08	Fri 6/6/08
36	**Agency Reconfiguration Projects (Duration Varies)**	**720 days**	**Fri 4/10/09**	**Thu 1/12/12**
37	Lower 120 Fleet Reprogramming	9 mons	Fri 4/10/09	Thu 12/17/09
38	Lower 120 Infrastructure	8 mons	Fri 12/18/09	Thu 7/29/10
39	NPSPAC Fleet Reprogramming	13 mons	Fri 12/18/09	Thu 12/16/10
40	NPSPAC Infrastructure	14 mons	Fri 12/17/10	Thu 1/12/12
41	All Frequencies Vacated / Substantial Completion	0 days	Thu 1/12/12	Thu 1/12/12
42	**Project Completion & Closeout Phase**	**270 days**	**Fri 1/13/12**	**Thu 1/24/13**
43	Fleet Exit Template Development & Programming	9 mons	Fri 1/13/12	Thu 9/20/12
44	Final Regional Interoperability Testing Complete	90 days	Fri 9/21/12	Thu 1/24/13
45	**Regional Reconfiguration Complete**	0 days	Thu 1/24/13	Thu 1/24/13



Date: Wed 3/28/07

Critical Task Progress Milestone Summary

EXHIBIT 8

800 MHz Transition Administrator
The Official Reconfiguration Manager

April 9, 2007

Mr. John Wehmann
Sprint Nextel
6260 S. Vinecrest Dr.
Salt Lake City, UT 84121

RE: FREQUENCY RECONFIGURATION AGREEMENT #DL8904416409
INCUMBENT: County of Fairfax, Virginia
FILE: Fairfax FRA Clean 32907 (6).doc
DATE/TIMESTAMP: 3/29/2007 4:50 PM
AMOUNT: $ 2,482,208.00

Dear Mr. Wehmann:

The 800 MHz Transition Administrator ("TA") has completed its review of the above-referenced Agreement ("Agreement"), submitted to the TA on March 30, 2007. The TA hereby grants its approval of the Agreement in the amount of $2,482,208.00 with the following understanding:

Section 6 of the Agreement indicates that the Licensee's rebanding schedule will be set forth in a Preliminary Master Schedule ("Preliminary Schedule") to be completed on or before July 31, 2007 and that will be based upon a schedule that was provided to the TA in March, 2006. The TA notes that the March, 2006 schedule envisions tasks to be performed after the current Program Completion Date as defined in the Agreement. The TA is not by this action approving any extension of the Program Completion Date. Moreover, if the Preliminary Schedule, when submitted to the TA for approval, contains tasks to be performed after the Program Completion Date, absent some interim decision by the FCC, the TA will not approve the schedule. As set forth in Section 6 of the Agreement, if the Preliminary Schedule extends beyond the Program Completion Date, the Licensee will need to seek FCC relief from the Program Completion Date deadline.

The TA further notes that there are multiple costs contained in Schedule C of the Agreement that implicitly will be incurred after the Program Completion Date including, specifically, costs associated with coordinating with the regional coordinator. The TA is approving these costs subject to the Licensee's compliance with Section 6 of the Agreement in the event that the Preliminary Schedule or any subsequent schedules extend beyond the Program Completion Date. This would require the submission to the FCC of a request for relief from the Program Completion Date deadline and the FCC's ultimate grant of some form of relief from the Program Completion Date deadline. In the event that no such request for relief is requested, or no relief is obtained, all costs incurred after the Program Completion Date will be considered denied. The TA is not by this action approving any extension of the Program Completion Date.

Licensee agrees to provide the TA with monthly updates regarding the progress of development and implementation of the Preliminary Schedule and any subsequent schedules.

The TA also notes that there are a number of affected NPSPAC licensees (see attached Schedule of affected licensees) that have frequencies that would cause interference to, or experience interference from, the 806 – 809 MHz and 851 - 854 MHz frequencies included in the Agreement if the reconfigurations of the respective parties are not properly coordinated. The Regional Planning and Coordination Program is intended to coordinate schedules and the TA notes that as part of that Program all affected licensees must be included in the scheduling process or provided clear methods and procedures for reporting and resolving any interference with all 806 – 809 and 851 - 854 MHz frequencies remaining in operation per the Agreement.

Sprint Nextel agrees to coordinate the implementation of this reconfiguration by monitoring the retuning schedule and coordinating incumbent and incoming affected NPSPAC licensees, as identified in the attachment to this letter, to ensure that no interference results. Sprint Nextel agrees to perform these requirements in cooperation with the Regional Planning and Coordination agency representative(s) and the incumbent agency representative(s) as discussed above.

Finally, when available, please forward a copy of the fully executed Agreement to us for our records, with correction to the latitude for KNIH412 location 6 in Schedule B which should be 38-51-18 for Frequency 855.3875. Please note that any changes to the Agreement must be submitted to the TA for review and approval.

Should you have any questions in this matter, please do not hesitate to contact me at 703-747-3943 or jon.strbak@bearingpoint.com.

Very truly yours,

Jon Strbak
Manager
BearingPoint

Attachment 1: Frequency Reconfiguration Agreement, #DL8904416409

ExistingEntityName	CallSign	NPSPAC EntityName - Affected NPSPAC Licensees	NPSPAC CallSign
FAIRFAX, COUNTY OF	WNAJ365	ALBEMARLE, COUNTY OF	WPXR392
		Anne Arundel, County of	WPBW266
		BALTIMORE, CITY OF	WPYR413 WQAA330 WQCB503 WQCD704
		CALVERT, COUNTY OF	WPFN680
		CARROLL COUNTY, MD	WQFA946 WPIQ515
		CHARLES, COUNTY OF	WPZH908 WPZR834
		County of Frederick	WNZE557
		HARFORD COUNTY, MD	WQAK305 WQAL459
		HARRISONBURG, CITY OF, HARRISONBURG-ROCKINGHAM EMER COMM CTR	WQEK814
		LOUDOUN, COUNTY OF	WPQZ390 WPRS263
		METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (MWAA) MONTGOMERY, COUNTY OF	WPAY961 WPVA690 WPVK244
		Prince George's County	WPBG212 WPBG213
		PRINCE WILLIAM, COUNTY OF	WPHP905 WPYJ864
		St. Mary's County Of	WPVN676
		UPPER MARYLAND EASTERN SHORE CONSORTIUM	WPSG976 WQGE496
		WARRENTON FAUQUIER JOINT COMMUNICATION CENTER	WPSK364
FAIRFAX, COUNTY OF	WPVY861	Anne Arundel, County of	WPBW266
		CALVERT, COUNTY OF	WPFN680
		CARROLL COUNTY, MD	WQFA946 WPIQ515 WPIU695
		PRINCE WILLIAM, COUNTY OF	WPHP905 WPYJ864

ExistingEntityName	CallSign	NPSPAC EntityName - Affected NPSPAC Licensees	NPSPAC CallSign
FAIRFAX, COUNTY OF	KNIH412	ALBEMARLE, COUNTY OF	WPXR392
		Anne Arundel, County of	WPBW266
		BALTIMORE, CITY OF	WPYR413
			WQAA330
			WQCB503
			WQCD704
		CALVERT, COUNTY OF	WPFN680
		CARROLL COUNTY, MD	WQFA946
			WPIQ515
			WPIU695
		CHARLES, COUNTY OF	WPZH908
			WPZR834
		County of Frederick	WNZE557
		HARFORD COUNTY, MD	WQAK305
			WQAL459
		LOUDOUN, COUNTY OF	WPQZ390
		METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (MWAA)	WPAY961
		MONTGOMERY, COUNTY OF	WPVA690
			WPVK244
		Prince George's County	WPBG212
			WPBG213
		PRINCE WILLIAM, COUNTY OF	WPHP905
			WPYJ864
		St. Mary's County Of	WPVN676
		UPPER MARYLAND EASTERN SHORE CONSORTIUM	WPSG976
			WQGE496
		WARRENTON FAUQUIER JOINT COMMUNICATION CENTER	WPSK364

EXHIBIT 9

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Office of the County Attorney
Suite 549, 12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Phone: (703) 324-2421; Fax: (703) 324-2665
www.fairfaxcounty.gov

April 13, 2007

Jon Strbak
Manager
BearingPoint
800 MHz Transition Administrator
jon.strbak@bearingpoint.com

Re: *In the Matter of Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55; Regional Planning and Coordination in the National Capital Area; Frequency Reconfiguration Agreement # DL8904416409

Dear Mr. Strbak,

I am writing regarding your letter dated April 9, 2007, to John Wehmann of Sprint Nextel. Your letter notified Mr. Wehmann that the 800 MHz Transition Administrator ("TA") approved the Frequency Reconfiguration Agreement ("FRA") for Fairfax County's Public Safety Voice Radio System except that "all costs incurred after the Program Completion Date [June 26, 2008 or such other date as may be established by the FCC] will be considered denied" unless Fairfax County submits a request to the Federal Communications Commission ("FCC") to waive the Program Completion Date and the FCC grants the County's request. By imposing these conditions, the TA has effectively made a significant amendment to the FRA by denying the County's negotiated contractual right to obtain payment for its rebanding costs. This is contrary to the FCC directive that "incumbents should incur no costs for band reconfiguration, and that the sole responsibility for paying all band reconfiguration costs – including the cost of preparing the estimate, negotiating the retuning agreement, and resolving any disputes – lies with Nextel." *Supplemental Order and Order on Reconsideration*, FCC 04-294, ¶15, 19 FCC Rcd. 15,129 (adopted Dec. 22, 2004).

The TA has taken this action with full knowledge that the jurisdictions in the National Capitol Region ("NCR") cannot complete rebanding by the Program Completion Date and maintain the interoperability of our radio systems that is critical to public safety operations in this region. Moreover, the TA has imposed these conditions on Fairfax County's right to be paid despite the fact that Fairfax County does not control the pace of rebanding by its interoperability partners and it cannot control whether the FCC grants a waiver. As the TA is aware, the best projections of Motorola and the NCR localities' consultants show that the NCR

cannot complete rebanding by the Program Completion Date without losing interoperability. Fairfax County provided the TA with a projected schedule for NCR rebanding more than one year ago, in March 2006, showing rebanding activities extending well beyond the Program Completion Date. Since then, County staff and consultants have discussed with TA representatives on many occasions, both in person and via telephone, the need for regional coordination to maintain interoperability and the fact that coordination would push the rebanding schedule past the Program Completion Date. Last week, Fairfax County provided the TA an updated proposed schedule from Motorola, still showing that the NCR jurisdictions cannot be rebanded until several years after the Program Completion Date.

Solely in the interest of supporting the FCC's initiative to reband public safety radio frequencies, Fairfax County was ready to enter into a contractual obligation with Sprint Nextel that places the County at risk by committing to a yet-to-be-determined schedule. The County did so while explicitly acknowledging in Section 6 of the FRA that the TA does not have the authority to grant the County an extension of the Program Completion Date, and that the County must request and receive a waiver of that deadline from the FCC. However, it was always our understanding that the County's ability to obtain a waiver would not affect the County's right to payment for the costs of work required to reconfigure the County's system. The FRA that the County and Sprint Nextel ("Parties") negotiated does not allow Sprint Nextel to refuse to pay the County's costs. By introducing a significant amendment to the terms to which the Parties agreed, the TA has shifted the entire risk to the County.

If the TA believes that it has the need to impose these conditions, which it identified for the first time in its letter dated April 9, 2007, then the conditions must be included in the FRA contract for the protection of the Parties. Doing so will require the Parties to reopen negotiations in order to attempt to include language that will accommodate these new TA conditions. Upon reopening the negotiations and the inclusion of the TA's conditions, the County will seek provisions to terminate the FRA in the event the FCC denies the County's or NCR's waiver requests and to require Sprint Nextel to pay any costs that may be needed to return the County to *status quo ante*. Additionally, we expect that Motorola calculated its quote based on its completing the entire statement of work. If we now ask Motorola for a contract provision allowing the County to direct Motorola to stop all work if the FCC does not grant a waiver request, we anticipate that Motorola will need to revise its cost estimate. In that event, the Parties will need to renegotiate Motorola's cost estimate as well. The TA's imposition of these conditions not only unnecessarily places the negotiated FRA at risk, it also introduces a significant potential delay of the County's and NCR's effort to support the FCC's rebanding initiative.

We have consistently advised our Board of Supervisors that the FCC has directed that licensees should incur no costs for band reconfiguration, and that the sole responsibility for paying all band reconfiguration costs lies with Sprint Nextel. The FRA must clearly confirm that Sprint Nextel is obligated to pay all the costs of reconfiguration that the County may incur. Until this issue is resolved, we cannot recommend to our Board that it approve an FRA that is contrary to the

FCC's directive, and in which the TA commits the County to undertake millions of dollars in rebanding expenditures that may not be reimbursed based on events that the County cannot control.

Please advise us on how to proceed.

Sincerely,

Erin C. Ward

Erin C. Ward
Assistant County Attorney

cc: John Wehmann, Sprint Nextel
Aspasia A. Paroutsas, TA Mediator

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